

I. CHANGES RELATED TO SHARE CAPITAL :

The chapter on share capital and debentures introduces some key changes in the 2013 Act. To illustrate, the 2013 Act does not give any cognizance to the existing requirement of section 90 of the 1956 Act that provided some saving grace to private companies.

Therefore, the applicability of following sections of the 2013 Act is no longer restricted to public companies and private companies which are subsidiaries of a public company and are now applicable to private companies also.

Voting rights [Section 47]

The provisions of the 2013 Act regarding voting rights are similar to the existing section 87 of the 1956 Act. The only change noted in the 2013 Act is the removal of distinction provided by the 1956 Act with respect to the entitlement to vote in case the company fails to pay dividend to its cumulative and non-cumulative preference share holders.

Variation of shareholder's rights [Section 48]

Similar to the other provisions of the 1956 Act, the 2013 Act acknowledges the requirements of section 106 of the 1956 Act with an additional requirement in respect of those classes of share holders whose rights are affected pursuant to any variation. The proviso to section 48(1) of the 2013 Act states that if the variation by one class of shareholders affects the rights of any other class of shareholders, the consent of three-fourths of such other class of shareholders shall also be obtained and the provisions of this section shall apply to such variation.

Application of premiums received on issue of shares [Section 52]

The 2013 Act lays down a similar requirement in section 52 as that of the section 78 of the 1956 Act in respect of application of premiums received on issue of shares; however, the section of the 2013 Act has a non-obstante provision in respect of certain class of companies which would be prescribed at a later date. The 2013 Act states that these classes of companies would not be able to apply the securities premium towards the below specified purposes, unless the financial statements are in compliance with the accounting standards issued under section 133 of the 2013 Act:

- Paying up unissued equity shares of the company as fully paid bonus shares
- Writing off the expenses of or the commission paid or discount allowed on any issue of equity shares of the company
- Purchase of its own shares or other securities

Prohibition on issue of shares at a discount [Section 53 & 54]

Companies would no longer be permitted to issue shares at a discount. The only shares that could be issued at a discount are sweat equity wherein shares are issued to employees in lieu of their services.

Further, Explanations I and II to the existing section 79A of the 1956 Act that prescribe the provisions in respect of sweat equity have not been included in the 2013 Act. Explanation I defined company for the purpose of this section and Explanation II defined sweat equity.

Issue and redemption of preference shares

The existing requirement of sections 80 and 80A of the 1956 Act with respect to the issue and redemption of preference shares continues to be acknowledged by the 2013 Act. The 2013 Act reiterates the existing requirement that a company cannot issue preference shares with a redemption date of beyond 20 years. However, it gives an exemption for cases where preference shares have been issued in respect of infrastructure projects. Infrastructure projects have been defined in Schedule VI of the 2013 Act and these shares would be subject to redemption at such percentage as prescribed on an annual basis at the option of such preference shareholders.

Further, the 2013 Act adds another administrative requirement of obtaining special resolution with respect to the preference shares which could not be redeemed by a company. The 2013 Act states that where a company is not in a position to redeem any preference shares or to pay dividend, if any, on such shares in accordance with the terms of issue, it may, with the consent of the holders of three-fourths in value of such preference shares and with the approval of the Tribunal issue further redeemable preference shares equal to the amount due, including the dividend thereon, with respect to the unredeemed preference shares. On the issue of such further redeemable preference shares, the unredeemed preference shares shall be deemed to have been redeemed.

Refusal of registration and appeal against registration [Section 58(2)]

The provision relating to refusal of registration of transfer or transmission of securities by private and public companies has been separately clarified in the 2013 Act. The private and public companies are required to send notice of refusal within 30 days of the receipt of instrument of transfer, and aggrieved party may appeal to the Tribunal against the refusal within the specified number of days.

Further issue of share capital [Section 62]

The existing requirement of section 81 of the 1956 Act in regard to further issue of capital would no longer be restricted to public companies and would be applicable to private companies also, since sub-section 3 of section 81 of the 1956 Act has not been acknowledged in the 2013 Act.

Further, the 2013 Act provides that a rights issue can also be made to the employees of the company who are under a scheme of employees' stock option, subject to a special resolution and subject to conditions as prescribed. Further, the price of such shares should be determined using the valuation report of a registered valuer, which would be subject to conditions as prescribed.

Issue of bonus shares [Section 63]

The existing 1956 Act does not have any specific provision dealing with issue of bonus shares although it has referred to the concept of bonus shares at many places. The 2013 Act includes a new section that provides for issue of fully paid-up bonus shares out of its free reserves or the securities premium account or the capital redemption reserve account, subject to the compliance with certain conditions such as authorization by the articles, approval in the general meeting and so on.

Unlimited company to provide reserve share capital on conversion into limited company [Section 65]

This section corresponds to section 32 of the 1956 Act and seeks to provide that an unlimited company having a share capital may be re-registered as a limited company by increasing the nominal amount of each share, subject to the condition that no part of the increased capital shall be capable of being called up, except in the event and for the purposes of the company being wound up. The 2013 Act further provides that a specified portion of its uncalled share capital shall not be capable of being called up except in the event and for the purposes of the company being wound up.

Reduction of share capital [Section 66]

The 2013 Act gives cognizance to one of the amendments made in the listing agreement by SEBI. A new clause 24(i) was inserted to the listing agreement which provided that a scheme of amalgamation or merger or reconstruction, should comply with the requirements of section 211(3C) of the 1956 Act. A similar requirement has been introduced in section 66 of the 2013 Act, which states that no an application for reduction of share capital shall be sanctioned by the Tribunal unless the accounting treatment, proposed by the company for such a reduction is in conformity with the accounting standards specified in section 133 or any other provision of the 2013 Act and a certificate to that effect by the company's auditor has been filed with the Tribunal.

Further, the 2013 Act clarifies that no such reduction shall be made if the company is in arrears in repayment of any deposits accepted by it, either before or after the commencement of the 2013 Act, or the interest payable thereon.

Power of the company to purchase its own securities [Section 68]

The existing provision of section 77A of the 1956 Act has been acknowledged by the 2013 Act. The only difference is that the option available to company for a buy-back from odd lots is no longer available [Section 68].

The 2013 Act provides flexibility in management and administration by recognizing the electronic mode for notices and voting, which is in line with the efforts of the Ministry of Company Affairs to give cognizance to use of electronic media as evident from a number of green initiatives' introduced recently, maintenance of registers and returns at a place other than the registered office.