

I. NEW PROVISIONS INTRODUCED :

The 2013 Act has introduced several new concepts and definitions, some of which are accounting standards, auditing standards, associate company, CEO, CFO, control, deposit, employee stock option, financial statement, global depository receipt, Indian depository receipt, independent director, interested director, key managerial personnel, promoter, one person company, small company, turnover, voting right etc. Few of them which believed to be the most crucial are analyzed below:

One Person Company [Section 2(62) and Section 3(1) (c)]: The current law i.e. the Companies Act, 1956 does not have any concept of one person company ('OPC'), small company and associate company. The new law has for the first time introduced these concepts.

OPC may be registered with one member and may have a single director. The new law seeks to provide a simpler legal and governance regime for operation and maintenance of OPC and waives a number of compliance requirements. To ensure that the OPC 'lives on' even after the death/disability of the sole member the new law provides for appointment of another person as a nominee member. With no maximum limit on capital infusion, OPC provides greater flexibility to small businessman to manage their business with lesser compliance even while limiting their liability.

Small Company[Section 2(85)]: The 2013 Act introduces this new concept of a small company, which means a company other than a public company having paid up share capital not exceeding INR 50,00,000 (or such higher amount as may be prescribed which shall not be more than INR 5,00,00,000) or turnover of which as per its last profit and loss account does not exceed INR 2,00,00,000 (or such higher amount as may be prescribed which shall not be more than INR 20,00,00,000). However, this section of small company will not be applicable to (a) holding or subsidiary company; (b) company registered under Section 8 of 2013 Act (i.e. companies form with the charitable object); or (c) company or a body corporate formed under the special Act.

Dormant Company [Section 455]: The 2013 Act now allows a company to be formed and classified as a dormant company for holding assets or intellectual property subject to the company not having any significant accounting transaction. Further, an inactive company can also make an application to the Registrar in such manner as may be prescribed for obtaining the status of a dormant company.

Associate Company [Section 2(6)]: A company is considered to be an associate company of the other, if the other company has a significant influence over such company but which is not a subsidiary company of that other company and includes a joint venture company. Control of at least 20% of total share capital of a company is considered as 'significant influence'. Under the new law, a company is required to present the consolidated financial statements taking into account those of its subsidiaries and associate companies. Associate companies are treated as 'related parties' and if the directors are concerned or interested in such associate companies, they would not qualify for being independent directors. So also, holding any security interest or being indebted to or having a business relation with an associate company, would render an auditor ineligible for appointment. Auditor cannot provide certain specified non-audit services like management consultancy or investment banking to associate companies.

Private Company [Section 2(68) (ii)]: The 2013 Act has now increased the total limit of number of members / shareholders in private company from 50 to 200.

Investments Companies [Section 186]: The 2013 Act provides that any company (unless otherwise prescribed) shall not make investment through more than two layers of investment companies. However, this section has not been made applicable to a company acquiring any other company incorporated outside India, if such other company has investment subsidiaries beyond two layers as per the laws of such country. This Section may considerably restrict the flexibility of Indian companies in structuring their transactions.

Object Clause [Section 4(1)]: The 1956 Act required the object clause (which is stated in the memorandum of association of a company) to be classified into (a) main object; (b) objects incidental or ancillary to the attainment of the main objects; and (c) other objects of the company. The reason for having such classification in the object clause was to restrict the company from commencing any other business unless it complies with certain requirements. However, this requirement of such classification has been done away with by the 2013 Act, i.e. all objects will now be the main objects of the company.

Key Managerial Personal (KMP) [Section 2(51)]: KMP is commonly used in investment agreements and now finds a place in the 2013 Act. KMP includes (a) Managing Director (MD) or Chief Executive Officers (CEO); (b) Whole Time Director; (c) Chief Financial Officer (CFO); (d) Company Secretary (CS) and; (e) such other officer as may be prescribed. 2013 Act requires certain companies to appoint KMPs which will be notified in the Rules.

Promoter [Section 2(69)]: The term Promoter was not defined in the 1956 Act. However it was extensively used through company law. The 2013 Act now specifically defines Promoter, which includes (a) a person who has been named as such in the prospectus or is identified as such in the annual return; or (b) who has control over the affairs of the company (other than in a professional capacity), as a shareholder or a director or otherwise; or (c) in accordance with whose advice or directions the Board is accustomed to act.

Class Action Suits [Section 245]: The 2013 Act introduces the western concept of class action suits which allows requisite number of members, depositors or any class of them to file a suit against the company, its directors, auditors and/or other experts or consultants or advisors, if they believe that affairs of the company are conducted in a manner prejudice to the company or its members or depositors.

Buy back of Securities [Section 68]: The 2013 Act provides that no buy back will be done by a company within one year from date of closure of previous buy back. Based on this provision, each company will now require having a cooling off period of one year between the two buy backs. Further, if a company has defaulted in repayment of its loans, deposits or interests payable then the company shall compulsorily have to wait for a period of three years after repayment of all such outstanding amount and rectifying such breach.

Insider trading and prohibition on forward dealings company [section 194]: The 2013 Act for the first time defines 'insider trading' and price-sensitive information and prohibits any person including the director or key managerial



person from entering into insider trading [section 195 of the 2013 Act]. Further, the Act also prohibits directors and key managerial personnel from forward dealings in the company or its holding, subsidiary or associate.

Power to remove difficulties [section 470]:The central government will have the power to exempt or modify provisions of the 2013 Act for a class or classes of companies in public interest. Relevant notification shall be required to be laid in draft form in Parliament for a period of 30 days. The 2013 Act further states no such order shall be made after the expiry of a period of five years from the date of commencement of Section 1 of the 2013 Act.

Prohibition of association or partnership of persons exceeding certain number [Section 464]:The 2013 Act puts a restriction on the number of partners that can be admitted to a partnership at 100. To be specific, the 2013 Act states that no association or partnership consisting of more than the given number of persons as may be prescribed shall be formed for the purpose of carrying on any business that has for its object the acquisition of gain by the association or partnership or by the individual members thereof, unless it is registered as a company under the 1956 Act or is formed under any other law for the time being in force. As an exception, the aforesaid restriction would not apply to the following:

- A Hindu undivided family carrying on any business
- An association or partnership, if it is formed by professionals who are governed by special acts like the Chartered Accountants Act, etc.[section 464 of 2013 Act]

Mergers and acquisitions [Section 234]:The 2013 Act has streamlined as well as introduced concepts such as reverse mergers (merger of foreign companies with Indian companies) and squeeze-out provisions, which are significant. The 2013 Act has also introduced the requirement for valuations in several cases, including mergers and acquisitions, by registered valuers.

Corporate Social Responsibility [Section 135]:The 2013 Act makes an effort to introduce the culture of corporate social responsibility (CSR) in Indian corporate by requiring companies to formulate a corporate social responsibility policy and at least incur a given minimum expenditure on social activities.