

ICAI:WIRC

Seminar on Important Provisions of
The Companies Act, 2013

Compliance & e-Filing

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IMPORTANT

- * This presentation is in the nature of a support note for the speaker
- * Slides on standalone basis may not be self-explanatory

THE COMPANIES ACT 2013

- 29 Chapters
- Over 470 sections
- 7 Schedules
- “As may be prescribed” (AMBP)
- RoDs; Circulars; Notifications
- Exemption notifications : private cos.; Govt. cos.; Sec. 8 cos., Nidhi cos.
- Judgments

AMENDED BY

- The Companies (Amendment) Act, 2015
- The Companies (Amendment) Act, 2017

POWER TO REMOVE DIFFICULTIES - Sec. 470

- Central Government may, make such provisions, not inconsistent with the provisions of this Act, as appear to it to be necessary or expedient for removing the difficulty
- No such order shall be made after the expiry of a period of 5 years from the date of commencement of section 1
- **Companies (Removal of Difficulties) Order**

eForms

E FORMS i

- **RULES**

- Companies (Incorporation) Rules, 2014
- Companies (Prospectus and Allotment of Securities) Rules, 2014
- Companies (Share Capital and Debentures) Rules, 2014
- NCLT (Procedure for reduction of share capital of Company) Rules, 2016
- Companies (Acceptance of Deposits) Rules, 2014
- Companies (Management and Administration) Rules, 2014

- **eFORMS**

- **INC-**
- **PAS-**
- **SH-**
- **RSC**
- **DPT-**
- **MGT-**

E FORMS ii

- **RULES**
- Companies (Declaration and Payment of Dividend) Rules, 2014
- IEPF (Accounting, Audit, Transfer and Refund) Rules, 2016
- Companies (Accounts) Rules, 2014
- Companies (Filing of Documents and Forms in Extensible Business Reporting Language) Rules, 2015
- Companies (Audit and Auditors) Rules, 2014
- Companies (App. and Qualification of Directors) Rules, 2014.
- **eFORMS**
- **DIV-**
- **IEPF –**
- **AOC-**
- **AOC-XBRL**
- **ADT-**
- **DIR-**

E FORMS iii

- RULES

- Companies (Meetings of Board and its Powers) Rules, 2014
- Companies (App and Remuneration of Managerial Personnel) Rules, 2014
- Companies (Compromises, Arrangements and Amalgamations) Rules, 2016
- Companies (Removal of Names of Companies from the Register of Companies) Rules, 2016
- Companies (Registration Offices and Fees) Rules, 2014

- eFORMS

- **MBP-**
- **MR-**
- **CAA-**
- **STK-**
- **URC-**

E FORMS iv

- RULES

- Companies (Registration of Foreign Companies) Rules, 2014.
- Companies (Registration Offices and Fees) Rules, 2014
- Nidhi Rules, 2014
- NCLT Rules, 2016
- NCLAT Rules, 2016
- Companies (Mediation and Conciliation) Rules, 2016
- Companies (Adjudication of Penalties) Rules, 2014

- eFORMS

- FC-
- GNL-
- NDH-
- NCLT-
- NCLAT-
- MDC-
- ADJ-

TITLES v

- **RULES**
- Companies (Miscellaneous) Rules, 2014
- Companies (Cost Records and Audit) Rules, 2014
- Companies (Restriction on number of layers) Rules, 2017
- **eFORMS**
- **MSC-**
- **CRA-**
- **CRL-**

KEY FEATURES

- Instruction Kit: Section and Rule; Instructions; Fee etc.
- Pre-certification
- Exemption from pre-certification: Small, OPC
- Resubmission – only one time
- Straight Through Processing (STP) mode

ATTACHMENTS

- Signed documents
- Properly scanned
- Form size: 6 mb
- To reduce file size use save as option.
- Proper tab

TAB / RADIO BUTTON

- While attaching documents to the e form, use the tab assigned for the respective attachment. If attached through wrong tab, ROC may raise query for non attachment of the doc. If no tab is assigned for the doc than use optional button.

FREQUENCY OF FORMS

- Annual Forms – To be filed every year: annual return, annual accounts.
- Event Based Forms – To be filed only on happening of certain events.
- Days
- Filing Fee, additional fee
- ***Verification clause in every e-Form requires the date of board meeting where the director was authorised to digitally sign the form***

FORMS TO BE FILED WITH CENTRAL GOVT.

- Intimation of appointment of cost auditor by the company - Form CRA-2
- Filing application or documents to Central Government – Form CG-1

FORMS TO BE FILED WITH RD

- Removal of auditor(s) from office before expiry of term – ADT 2
- Conversion of section 8 company into company of any other kind – INC 18
- Shifting of Regd. Office from one state to another state or from jurisdiction of one RoC to another RoC within the same State – Form INC 23
- Memorandum of Appeal – Form ADJ 1
- Applications made to Regional Director – Form RD 1
- Extension of time for filing particulars of charge OR for rectification of omission or misstatement of any particular of charge – Form CHG 8

FORMS TO BE FILED WITH ROC

- Incorporation
- Change
- Charge
- Compliance
- Information
- Managerial Personnel
- Annual Filing
- Attachments: Non eForms
- Addendum

OBLIGATION TO INDICATE DIN

- Sec. 158: Every person or company, while furnishing any return, information or particulars as are required to be furnished under this Act, shall mention the DIN in such return, information or particulars in case such return, information or particulars relate to the director or contain any reference of any director.

COMPANIES (REGISTRATION OFFICES AND FEES) RULES, 2014: RULE 7

- Provided also that any correspondences (physically or electronically) and documents to be filed by any person shall contain name, designation, address, membership number or DIN, as the case may be, of the person signing such document and make sure correctness thereof and in no case, correspondence, merely with signature and writing authorised signatory shall be acceptable.

FEE FOR FILING

- Sec. 403(1): Any document, required to be submitted, filed, registered or recorded, or any fact or information required or authorised to be registered under this Act, shall be submitted, filed, registered or recorded **within the time** specified in the relevant provision on payment of such **fee as may be prescribed**

ANNUAL FORMS

- Sec. 403: FIRST PROVISOR: Annual return u/s 92 or financial statement u/s 137 : if not submitted, filed, registered or recorded, within the period provided in those sections, it may be submitted, filed, registered or recorded, as the case may be, after expiry of the period so provided in those sections, on payment of such **additional fee** as may be prescribed, which shall **not be less than one hundred rupees per day** and **different amounts may be prescribed for different classes of companies**

OTHER FORMS

- Sec. 403: SECOND PROVISIO : where the document, fact or information, as the case may be, in cases other than referred to in the first proviso, is not submitted, filed, registered or recorded, as the case may be, **within the period provided in the relevant section**, it may, without prejudice to any other legal action or liability under this Act, be submitted, filed, registered or recorded as the case may be, on payment of **such additional fee as may be prescribed** and **different fees may be prescribed for different classes of companies.**

DEFAULT

- Sec. 403: THIRD PROVISIO : Provided also that where there is **default on 2 or more occasions** in submitting, filing, registering or recording of the document, fact or information, it may, without prejudice to any other legal action or liability under this Act, be submitted, filed, registered or recorded, as the case may be, on payment of a **higher additional fee**, as may be prescribed and which **shall not be lesser than twice the additional fee provided under the first or the second proviso as applicable.**

PENALTY

- Sec. 403(2): Where a company fails or commits any default to submit, file, register or record any document, fact or information under sub-section (1) before the expiry of the period specified in the relevant section, the company and the officers of the company who are in default, shall, without prejudice to the liability for the payment of fee and additional fee, be liable for the penalty or punishment provided under this Act for such failure or default

SPECIAL ISSUES

ADDITIONAL DIRECTOR

- Holds office up to the date of the next annual general meeting or the last date on which the annual general meeting should have been held, whichever is earlier

MGT 14

- Sec.117: File Form MGT - 14 within 30 days

IEPF

- IEPF Authority (Accounting, Audit, Transfer and Refund) Rules, 2016
- Company shall furnish a statement in **Form No. IEPF 6** within 30 days of end of financial year stating therein the amounts due to be transferred to the Fund in next financial year

The Companies (Amendment) Act, 2017

NET WORTH - Sec. 2(57)

- Means the aggregate value of the paid-up share capital and all reserves created out of the profits, securities premium account, **and debit or credit balance of profit and loss account**, after deducting the aggregate value of the accumulated losses, deferred expenditure and miscellaneous expenditure not written off, as per the audited balance sheet, but does not include reserves created out of revaluation of assets, write-back of depreciation and amalgamation;

TURNOVER – Sec. 2(91)

- means the gross amount of revenue recognised in the profit and loss account from the sale, supply, or distribution of goods or on account of services rendered, or both, by a company during a financial year
- ~~• aggregate value of the realisation of amount from sale ,,,,,,,~~

ISSUE OF SHARES ON PRIVATE PLACEMENT BASIS – Sec. 42

- Sec. 42 called **Offer or invitation for subscription of securities on private placement** substituted by the new section to be called **Issue of shares on private placement basis.**
- Co. shall not utilise monies raised, unless allotment is made and the return of allotment is filed with the Registrar - within 15 days from the date of the allotment

PROHIBITION ON ISSUE OF SHARES AT DISCOUNT – Sec. 53

- ~~discounted price~~ DISCOUNT
- A company may issue shares at a discount to its creditors when its debt is converted into shares in pursuance of any statutory resolution plan or debt restructuring scheme in accordance with any guidelines or directions or regulations specified by the RBI under the RBI Act, 1934 or the Banking (Regulation) Act, 1949.

REGISTER OF SIGNIFICANT BENEFICIAL OWNERS IN A COMPANY – Sec. 90

- Applicable to every individual, who acting alone or together, or through one or more persons or trust, including a trust and persons resident outside India, holds beneficial interests:
 - (a) of not less than 25% or such other percentage as may be prescribed, in shares of a company; or
 - (b) the right to exercise, or the actual exercising of significant influence or control as defined in section 2(27), over the company (known as ‘significant beneficial owner’).

REGISTER OF SBOs IN A COMPANY – Sec. 90

- Every individual holding significant beneficial interest is duty bound to make a declaration to the company, specifying the nature of his interest
- Company shall maintain a register of the interest declared by individuals and changes therein
- Co. shall also file a return of significant beneficial owners of the company and changes therein with the Registrar

CALLING OF INFORMATION – Sec. 90

- Co. is empowered to give notice, to any person, whether or not a member of the co., whom the co. knows or has reasonable cause to believe:
 - (a) to be a significant beneficial owner of the company;
 - (b) to be having knowledge of the identity of a significant beneficial owner or another person likely to have such knowledge; or
 - (c) to have been a significant beneficial owner of the company at any time during the 3 years immediately preceding the date on which the notice is issued, and who is not registered as a significant beneficial owner with the company as required under section 90

SUBMISSION OF INFORMATION – Sec. 90

- Person called upon to furnish the relating to the significant beneficial ownership shall submit the same within a period not exceeding 30 days
- person fails to give – co. to apply to the NCLT within a period of 15 days

NOTICE OF MEETING – Sec. 101 i

- Provided that a general meeting may be called after giving shorter notice if consent, in writing or by electronic mode, is accorded thereto—
- (i) in the case of an AGM, by not less than 95% of the members entitled to vote thereat; and
- (ii) in the case of any other GM, by members of the co. -
- (a) holding, if the company has a share capital, majority in number of members entitled to vote and who represent not less than 95% of such part of the paid-up share capital of the company as gives a right to vote at the meeting; or

NOTICE OF MEETING – Sec. 101 ii

- (b) having, if the co. has no share capital, not less than 95% of the total voting power exercisable at that meeting:

Provided further that where any member of a company is entitled to vote only on some resolution or resolutions to be moved at a meeting and not on the others, those members shall be taken into account for the purposes of this sub-section in respect of the former resolution or resolutions and not in respect of the latter.

INTERIM DIVIDEND – Sec. 123(3)

- The Board may declare interim div during any F Y or at any time during the period from closure of financial year till holding of AGM out of the surplus in P & L Account or out of profits of the F Y for which such interim div is sought to be declared or out of profits generated in the F Y till the quarter preceding the date of declaration of the interim div:
- Provided that in case the co. has incurred loss during the current F Y up to the end of the quarter immediately preceding the date of declaration of interim dividend, such interim dividend shall not be declared at a rate higher than the average dividends declared by the company during immediately preceding 3 F Y

MISC

- S. 78: Satisfaction of charge – 360 days
- S. 96: AGM of an unlisted company may be held at any place in India if consent is given in writing or by electronic mode by all members in advance
- S. 110: Company may transact an item, which is mandatorily required to be transacted through postal ballot, at a general meeting also where the facility of electronic voting is provided by the company.

SECRETARIAL STANDARDS

SECTION 118

- (10) Every company shall observe secretarial standards with respect to general and Board meetings specified by the Institute of Company Secretaries of India constituted under section 3 of the Company Secretaries Act, 1980, and approved as such by the Central Government.
- Applicable to private companies too.

SS 1

- Set of principles for convening and conducting Meetings of the Board of Directors and matters related thereto.
- Mandatory
- Not applicable to section 8 (old section 25) companies

Every Meeting shall have a serial number

- “1/2015”, “2/2015”, “3/2015” and so on....
- “1/2015-16”, “2/2015-16”, “3/2015-16” and so on....or 1/15-16, 2/15-16, 3/15-16 and so on...
- 120th Meeting, 121st Meeting, 122nd Meeting and so on Here company may choose to either count and give continuous numbering from its incorporation or give continuous numbering from Meetings held on or after 1st July, 2015

Serial number of Adjourned Meetings

- Serial number of the original Meeting and the adjourned Meeting would be the same. For eg: In case the serial number of the original Meeting is 12th Meeting, the serial number of the adjourned Meeting should be 12th Meeting (Adjourned).

SERIAL NUMBERING OF ITEMS

- *Serially numbering irrespective of the number of the Meeting : 1, 2, 3, 4... and so on*
- *Serially numbering on the basis of the number of the Meeting : items to be discussed in 12th Meeting of the Board would be numbered as 12.1, 12.2, 12.3, 12.4 etc...*
- *Continuous numbering across years/Meetings: there are 8 items to be discussed in the first Meeting and 10 items in second Meeting: items of 1st Meeting will be numbered as item number 1-8 and the items in the second Meeting would be numbered 9-18 and so on.....*

SS 2

- Set of principles for the convening and conducting of General Meetings and matters related thereto
- Mandatory

SS 3

- Set of principles in relation to the declaration and payment of Dividend and matters related thereto
- RECOMENDATORY

THANK YOU ALL