

The Companies Act, 2013

Boon for Professionals and Bane for Companies

CS Anant Amdekar

The Companies Act, 2013

- Topics for discussion:
 - Cultural Changes – necessitating makeover in attitude.
 - Red Flags – areas of concern.
 - Frauds & Management Responsibility – key drivers.
 - MOA & AOA.
 - Appointment & Qualification of Directors

The Companies Act, 2013

- Topics for discussion:
 - Vacation, Resignation & Duties of Directors
 - Board Meetings
 - Accepting of deposits
 - Managerial Remuneration

The Companies Act, 2013

- Topics for discussions –
 - Declaration and Payment of Dividend
 - Related Party Transactions
 - Salient features of The Companies (Amendment) Act, 2015
 - Exemptions to Private Company – notification dt. 05.06.2015



Cultural Changes

- Changes in provisions are not only in letter but compliance in spirit of law is desired – Govt. is collecting lot of data thru disclosures/returns – e.g. Annual Return, Sec 179 resolutions passed by the Board, etc .
- More responsibility is cast on Professionals, KMPs of the company – many provisions - even intermediaries' are also responsible, Class Suit Actions, etc.
- Private companies need not be smaller in size.
- Increasing tendency to convert listed co. – unlisted co. - & Public co. - private co.

Cultural Changes

- Penalties have gone up multi-fold. – Sec 76(A) – default in compliance with Sec 73-76 - deposits – repercussions are –
- Company- 1cr – 10cr fine; officers – 2.5 lacs – 2 cr; imprisonment up to 7 years. (vide Companies (Amendment) Act, 2015)
- Now having adequate insurance policy is necessity.

Red Flags – areas of concern

- Sec 2(6) – Associate Company – One co. Having Significant Influence on the another – Co. Which holds at least 20% of the paid up capital or control of business decisions under an agreement. However, shares held by ‘Associate Co’ in its fiduciary capacity will not be considered for the purpose of calculation of 20% - (circular no. 24/2014 dt. 26.06.2014)(Subsidiary Co. Not included)
- Sec 2 (51) - ‘Key Managerial Personnel’ – includes CEO or MD, CFO, WTD, CS and such other officer as may be prescribed – co is expected to identify and designate people, in adopting policy for KMPs – applicable to Cos with paid up cap of 100 cr and more OR turnover of 1,000 cr and more – Notification No. S.O. 1913(E) dt. 25.07.2014
- Whether co. Covered u/s 203 needs to appoint all the four designated officers?
- Can One person hold 2 KMP positions? Yes- with Companies (Amendment) Act, 2015

Frauds & Management Responsibility - Key Drivers

- Sec 2(60) – ‘Officer in default’ - KMP and Board of Directors. Further any job or responsibility delegated by either KMP or Board, such authorized person will be an officer in default
- Sec 2 (76) – Related Party – wider coverage – now also includes – ‘any body corporate who is accustomed to act’ , KMPs, Holding – subsidiary – Associate Co. if Pvt co iholding/subsidiary/associate co/step down subsidiary, - **it will not be termed as Related Party.**
Vide notification dt. 05.06.2015
- Sec 149(12) – responsibility of Independent Director - Act of Omission or commission with his knowledge – **attributable thru’ Board Process** – now from Executive people like MD/WTD/Chairman driving minutes, now Independent directors will drive.

MOA and AOA

- MOA – Table A - Sec 4 – Noteworthy changes as compared to CA 1956 –
 - Objects Clause to be in two parts – Main Objects & Objects which are necessary in furtherance thereof.(so as such ‘Other Objects’ Clause not covered). – (any & all approach can not be adopted.)
 - Minimum Capital Clause requirement is done away with. – no need of 1 lac & 5 lac – as minimum amounts.

MOA and AOA

- As per English Companies Act – unless a company’s articles specifically restricts the objects of the company, its objects are unrestricted.
- As per the decision given in **Eastern Telegraph Co. Ltd.** – *“if the objects clause has a specific main object followed by general words, the general words should not construed as enabling the company to throw its main objects altogether, and embark on some new venture.”*

MOA and AOA Cont.....

AOA – Table F -Sec 5 - Noteworthy changes as compared to CA 1956 –

- Entrenchment Provisions – meaning is “ establish so firmly that – change is very difficult or unlikely.”
- It may require a form of supermajority or consent of another party. – more suitable for MNC investing in India.
- such prov. can be at the time of formation of the company OR by amendment to AOA – agreed to by all the members in Pvt. co./ special prov. in case of Public co.
- Notice to ROC/MCA of such amendment.
- Existing cos.(registered under earlier laws), AOA can continue to be applicable.

MOA and AOA – Cont.....

- Every company has to have Articles under the C A 2013, where as there was no obligation to register the articles in case of public companies.
- **Crompton Greaves Ltd. v/s Sky cell communication Ltd.** – Fact – a joint venture agreement provided restrictions on rights of the members of the company created by the joint venturers on transferability of their shares. But the restriction as to transferability was not carried into the articles of the company.
- Courts decision –
- *Restriction had not acquired its binding force on the members of the company though it was binding on the partners of the joint venture.*

MOA and AOA – Cont....

- **V.B.Rangaraj v/s V.B.Gopalkrishnan –**
- *“whether under the Companies Act or Transfer of Property Act, shares are transferable like any other movable property. So any restriction in the right of a shareholder to transfer his shares must be contained in its articles.”*
- *Hence entrenchment provisions in the AOA is welcome measure and we need to ensure such provisions are incorporated in AOA.*
- *In Singapore Companies Act – such provision exists since 2004.*

Appointment & Qualification of a Director

- Sec 2(34) – Director means a director appointed to the Board of a company.
- Whether co. can designate a person as director though he is not a member of a Board? Can co. Designate a person as ‘ED’?
- Minimum directors - (Sec 149) – Pvt. – 2, Public – 3 & OPC – 1.
- Maximum directors – (Sec 149) – 15 thru’ AOA, more than 15 – special resolution.
- One Resident director – who has stayed in India for a period of not less than 182 days in previous calendar year .
In case of appointment post 1st April proportionate no of days.

Appointment & Qualification of a Director

- One Woman director – every Listed Co. & every Public Co. Having paid up cap of 100 cr or more OR Turnover of 300 cr or more. (cooling period 1 year)
- On appointment of Woman director – Singapore ranks 7th – it is below the average. In fact quota system has not gone well with laureates and they have taken objection.
- Independent director – **Listed Co.** – 1/3rd of the total no. – **Public Co.** – Paid up Share Capital – 10 cr or more OR Turnover of 100 cr or more OR aggregate borrowing of more than 50 cr (figs as on last audited BS.) – cooling period 1 year.
- In case of vacancy – fill up at the earliest but not later than immediate next BM or 3 months from the date such vacancy.
- **Whether ‘Nominee director’ is Independent director? – he is not.**

Appointment & Qualification of a director – Cont....

- A shadow director or a de facto director occupying the position of a director without the formal appointment to the Board of Directors of a company would not fall within the exhaustive definition of a director u/s 2(34) of the C A 2013.
- However, section 185(1) of the C A 2013 still retains the concept of a shadow director when it says – *any body corporate, Board of Directors, Managing director or a manager – is accustomed to act in accordance with the directions.....*

Appointment & Qualification of a Director

- Disqualifications – Sec164 (corresponds to Sec 274 of 1956)
 - He is of unsound mind and stands so declared by competent court.
 - Un-discharged insolvent
 - Convicted by court of any offence whether involving moral turpitude **or otherwise imprisonment for not less than 6 months and five years have not elapsed from such sentence..** New words
 - Has been convicted of the offence dealing with 'Related Parties transaction/s u/s 188, any time during last 5 years.

Vacation of Office of Director

- Sec167 –
 - Disqualified u/s 164
 - Absents himself from all the meetings of BOD in a period of 12 months **with or without seeking leave of absence of the Board.** (Pvt cos. be careful)
 - **Acts in contravention of sec 184 or fails to disclose his interest.**
 - **Has been convicted of any offence** Even if he has appealed against such order, he is disqualified.
 - **If appointed by virtue of he holding office in holding, subsidiary, associate co. And if he ceases to hold such office then** (All Pvt. Group cos. Must be careful)

Resignation of Director

- Sec 168 – a notice in writing to the co. and the board shall on receipt of such notice **take note of the same.** (no resolution is required)
- Director shall also forward a copy his resignation **alongwith detailed reasons for the resignation** to ROC with in 30 days in form DIR 11 – **so co./director should not follow a practice of – due to pre-occupation, ill health** because if you get appointed in some other co. then ROC may take exception.
- Resignation shall be effective from the date on which the notice is received by the co. the date specified by the director whichever is later.
- In case all the directors resigned or vacate then Promoter shall appoint or in his absence Central Govt. Shall appoint and they shall hold office till appointed in general meeting – **(Satyam episode – Govt was questioned about its authority to appoint director/s.)**

Duties of Directors – new provision

- Sec 166 - This provision needs to be understood from Management Responsibility perspective also.
- Director shall act in good faith in order to promote Objects of the co. And for the benefit of stakeholders including **environment**.
- He shall exercise his duties with **due and reasonable care, skill and diligence** and shall exercise independent judgement. (**very wide in scope no ready definition for these terms**)
- **Should not have conflict of interest even thru his relatives, partners, associates.**
-

Duties of Directors – new provision

- Knowledge Test -
 - If the independent director/director does not initiate any action upon knowledge of any wrong – such director should be held liable.
- Knowledge should flow from the process of the Board.
- So recording of dissent of a director where an individual director do not agree to the decision must be recorded in the minutes which can act as a defence.

Duties of Director – New Provisions...

- Duties –
 - undertake appropriate induction program.
 - Update & refresh skills, knowledge & familiarity with the company. (what will be the position in a controversy such as ‘Maggie’ – Nestle.)
 - keep themselves well informed about the company and the external environment in which it operates. (what happens when Ranbaxy’s US-FDA approval is cancelled – duty of the ID?)
 - Report concerns about unethical behavior, actual or suspected fraud How to monitor especially in banking/NBFCs?

Board Meetings

- Minimum No. Of meetings – Sec 173 – first meeting in 30 days of incorporation.
- Four meetings every year and gap between 2 successive BMs should not be more than 120 days. (whether 120 days to be counted from 1st April or from the previous meeting held before 1st April?)
- Notice - Not less than 7 days - if AOA provides for higher no of days then co. needs to comply with its AOA – compliance with Secretarial Standards also mandatory.
- Date, date and time – as may be convenient to the members of the Board.
- Place – as may be convenient to the members of the Board

Board Meetings

- Quorum -Sec174 –
 - $1/3^{\text{rd}}$ of the total strength or two whichever is higher including directors who participate by video conferencing or **by other audio visual means** – so participation thru mere audio conferencing can be counted for quorum?
 - In case of vacancy or interested director not participating thereby leaving the remaining no below the quorum requirement then remaining directors act for increasing the total no. of directors or for convening general meeting and not any other purpose.

Board Meetings.....

- In case of interested directors exceeds or is equal to $2/3^{\text{rd}}$ of the total strength remaining no. So far as not less than 2 constitutes valid quorum – **it is deviation from 1956 Act.**
- **BM can not be held for want of quorum then unless AOA provides otherwise, it shall stand automatically adjourned to the same, same time same place in the next week and if that day is national holiday then next succeeding day which is not national holiday. Does that mean BM can not be held on National Holiday?**

Board Meetings.....

- Minutes of the BM – Sec 118 –
 - draft to be circulated (physical or thru electronic mode) within 15 days of the conclusion of meeting – (good practice is 7 days of the meeting).
 - Any director wish to suggest changes/ comments/dissent must communicate within 7 days of receipt.
 - Minutes to be signed within 30 days of the conclusion of the meeting.
 - ‘duty attributable to the Board process ..’ – one must note.
 - Either every director must confirm or give his comments in writing about the accuracy of minutes else it will be treated as approved by that director.

Acceptance of Deposits

- Sec 73 – applicable to all the companies for accepting deposits even from Members. **In a Pvt. Co. - Acceptance of deposits from Members – if such deposits do not exceed 100% of paid-up cap & free reserves.**(notification dt. 05.06.2015)
- Sec 76 – applicable to certain eligible public co. – net worth not less than 100 cr OR turnover not less than 500 cr.
- It means, as in C A 1956, pvt co could have accepted deposits from its members, now unless it comply with Sec73, it can not.

Acceptance of Deposits Cont...

- Now, not any public co can accept deposits unless it is eligible u/s 76.
- Rule 2(c) of The Companies (Acceptance of Deposits) Rules, 2014 – ‘Deposits’ mean –
- ‘any receipt of money by way of deposit or loan or in any other form.’

Acceptance of Deposits Cont...

- Some exclusions from def. of Deposits, which warrant attention –
- Any amount received by issuing CPs or any other instruments as per RBI guidelines.
- Share application money/advance against allotment of securities – if security is not allotted in sixty days of receipt and thereafter not refunded in 15 days, then it is treated as deposit.

Acceptance of Deposits Cont....

- ICDs – (keep in mind sec 185)
- Amounts received from directors (Keep in mind sec 188 – Related Party tran.)
- Bonds or debentures compulsorily convertible within 5 years.
- Amounts rece from employees not exceeding annual salary.
- Advance against long term projects for supply of capital goods.
- Any amount receive by Pvt Co. before 01.04.2014, though of the nature of ‘deposit’ as per new prov. Will not be termed as deposit, But on renewal/fresh acceptance after 01.04.2014 – prov. Will be applicable. (circular no. 5/2015 dt. 30.03.2015.)

Acceptance of Deposits – Cont....

- Share Application amount received before 31.03.2014 – must be allotted or refunded before 01.06.2014.
- Amount received against ‘immovable property’ – not deposit. – **what if Construction company receives advance/booking against flat and such amount remains in the balance sheet for 2-3-5 years then will it be looked upon as deposit?**
- Credit rating once a year and filing of return by 30th june every year in DPT-3. **change in version 13.06.2015**
- **Vide G.S.R 241(E) dt. 31.03.2015.**

Acceptance of Deposits Cont...

- Formalities –
 - DPT 1 – circular by Regd. AD, Speed Post, Electronic mode.
 - Upload copy on the website – **what is official website? E.g. Singapore based co having global website- whether can be considered as website in India?**
 - Publish in 2 news papers.
 - Issue of deposit receipt.
 - File a copy with ROC – 30 days thereafter advertisement in newspapers.
 - Deposits held on 31.03.2014, return – DPT -4 to be filed by 31.08.2014 (circular no. 30/2014 dt. 17.07.2014)

Acceptance of Deposits Cont...

- Rule 5 - deposit insurance – ‘amount specified in deposit insurance contract shall be deemed to be the amount – in respect of principal + interest due. Co. can accept deposits with out deposit insurance contract till 31.03.2015. (vide G.S.R. 386(E) dt 06.06.2014.
- In case of default in repayment insurance co liability is limited upto the amount specified in the contract.
- If the co is not issuing secured deposits, who will safeguard the interest of depositors? Now there is nothing like unsecured deposits.

MANAGERIAL REMUNERATION

- Managerial Personnel – Sec 196 –
- It provides for appointment of MD/WTD/Manager – (the term ED is not covered)
- For a term of 5 years and re-appointment not before 1 year of his term of expiry.
- Legal qualifications –
 - Age of 21 – 75 years. Else special resolution (not mentioned for below 21 years.)
 - Un-discharged insolvent
 - Suspended payment to his creditors
 - Convicted for offence and imprisoned for more than 6 months.

MANAGERIAL REMUNERATION Cont...

- Appointment to be approved by BOD and subsequent general meeting. Notice of general meeting to include terms and conditions, remuneration, interest etc. (not applicable to Pvt. Co. 05.06.2015 notification)
- Filing of return in form MR.1 within 60 days of his appointment.
- In case of listed co – disclosures in Directors' Report – (new requirement) – Rule 5
 - ratio of remuneration of each director to the median remuneration of employees.
 - % increase in remuneration of each director.
 - Key parameters for variable component.
 - Remuneration should be as per remuneration policy of the company.

MANAGERIAL REMUNERATION CONT...

- **Mahindra & Mahindra Ltd. v/s Union Of India –**
 - remuneration paid to managerial personnel for professional services rendered by him can not be termed as ‘remuneration for the purpose of SEC 196,197...
 - when managerial personnel enjoys any benefit or amenity without company incurring any expenditure, can not be termed as ‘remuneration’.
 - However, Sweat Equity Shares issued to managerial personnel will be treated as a part of remuneration to him.

DECLARATION & PAYMENT OF DIVIDEND

- Dividend can be declared out of – Sec 123
 - current year's profit or previous year's profit or Out of free reserves(not any reserves) only after –
 - providing for losses depreciation up-to-date i.e. financial year (05.06.2015 notification)
 - Transfer certain % to reserves(as it may deem appropriate-earlier % was provided)
 - Any default in repayment of deposits/interest on FD – co will not declare dividend.(sec73,74)
 - Failure to distribute dividend within 30 days of declaration – imprisonment up to 2 years and fine not less than 1000 per day.

DECLARATION & PAYMENT OF DIVIDEND

Cont...

- Interim Dividend – Sec123(3)
- BOD may declare out of current financial year's profit provided if in the immediate preceding quarter if the co has made a loss, then it can not declare dividend at a rate higher than last 3 financial years average dividend rate.
- Amount to be deposited within 5 days in a separate bank account with a scheduled bank.

DECLARATION & PAYMENT OF DIVIDEND

Cont...

- Declaration of dividend in case of inadequacy or absence of profits –
- Rate is not more than avg of last 3 years rate of dividend.
- Total amount to be drawn out of accumulated profits can not exceed $1/10^{\text{th}}$ of paid up cap and free reserves
- Out of such amounts losses to be adjusted of that financial year.
- Balance of reserves after withdrawal can not fall below 15% of paid up cap.
- DIV -5 – details of amounts to be transferred to Investor Education & Protection Fund.
- After 7 years even shares can be transferred to Investor Education & Protection Fund. (05.06.2015 notification)

DECLARATION & PAYMENT OF DIVIDEND

Cont...

- Transfer to Unpaid dividend account – Sec 124
 - if the amount remains unpaid or unclaimed for more than 30 days, such amounts to be transferred to ‘Unpaid Dividend Account’ within 7 days of expiry of such period.
 - After 90 days - amounts remaining unpaid/unclaimed the details to be put up Co website & Govt. prescribed Website.
 - After 7 years - transfer remaining amounts to ‘Investor Education & Protection Fund’
 - Default under this section – co will be subject to penalty – 5 lacs to 25 lacs & Officer will be subject to 1 lac- 5 lacs

DECLARATION & PAYMENT OF DIVIDEND CONT...

- **Hanuman Prasad Gupta v/s Hiralal**
- A dividend when proposed does not become a debt but only becomes a debt when declared.
- **CLB Circular dt. 13.04.1998 –**
- No conditional dividend can be declared. In case company requires approval of Financial institution or bank as a precondition of loan agreement then the company must obtain permission before declaring of dividend. For this reason, payment of dividend to shareholders can not be delayed.

Related Party Transactions

- Sections 297 & 314 of C A 1956 are now clubbed in Section 188.
- 'Arm's length transaction' – means transaction between two related parties that is conducted as if they were unrelated so that there is no conflict of interest.
- Sec 2(76) – some new dimensions –
 - Clause (ii) - KMP or his relative is covered.
 - Clause (vi) A pub co. In which director or manager is a director OR
 - If Pvt co. is Holding/Subsidiary/ Associate/Step down Sub. then not covered under related party. (05.06.2015 – notification)

Related Party Transactions Cont...

- Holds alongwith his relatives, more than 2% of its paid-up capital. (earlier transactions between 2 public companies were exempted from Sec297.)
- Any body corporate whose BOD, MD or Manager is accustomed to act in accordance with then advice, directions or instructions of a director or Manager.
- What is 'accustomed to act' – whether only directions/instructions on policy matters or even administrative directions/instructions are covered?

Related Party Transactions Cont...

- If directions/instructions given to WTD attract the provisions of this section?
- So as to arrive at 'accustomed to act' relationship we need some documentary evidence or Oral/circumstantial directions/instructions are enough.
- Clause (vii) – 'any person on whose advice, directions or instructions a director or Manager is accustomed to act (**advice given in Professional capacity not covered**)
- **Whether advice by Mr. Murthy as Mentor – Simlicitor will attract prov. Of this sub clause?**

Related Party Transactions Cont...

- Earlier immovable property transactions were not covered in Sec 297 – now this exemption is gone.
- Procedural aspects which needs attention –
 - To be considered at a BM – (Circular Resolution not allowed).
 - At first BM after 01.04.2014 – MBP 1 disclosure to be taken on record.
 - Separate Agenda point and not in any other business.
 - **Director shall not be present at the time of discussions in the BM.(whether his presence in the meeting can be considered as in a position of exerting ‘Undue Influence’**

Related Party Transactions Cont...

- In the following cases - Ordinary Resolution in Members meeting & **Interested Member can not vote on such business.**
- Sale, purchase and supply of goods/material > **25% of annual turnover.**
- Sale, buy or dispose off property of any kind (**movable /immovable/intangible**) > **exceeding 10% of Net Worth**
- Leasing of property > **10% of Net Worth OR 10% of turnover.**
- **Availing or rendering of services > 10% of Net Worth**

Related Party Transactions Cont.....

- Appointment to any office or place of profit in the company, **its subsidiary, associate co.** At a monthly remuneration > INR 2.5 lacs.
- Transaction between Holding Co. And Wholly owned subsidiary – **resolution passed by Holding co. Is sufficient.**
- Explanatory statement u/s 101 giving details of transactions and relationship of interested person.
- Section 189 & Rule 16 – Register of such contracts to be maintained. **Entries to be made immediately/asap and in chronological order.**

Related Party Transactions Cont...

- Entries in Register need not be made in the following cases –
 - Where a contract with any body corporate in which director himself together with any other director hold 2% of the paid up cap or less in that body corporate.
 - Where sale, purchase or supply of any goods, materials or services if the value or the cost does not exceed INR 5 lacs in aggregate in any year.
 - The Register shall be in the form MBP₄ and to be preserved permanently.

Frauds & Management Responsibility -

- Steps to be taken by the management to detect frauds in time –
 - Risk Management Policy – disclosure u/s 134 – entry of Air Asia – its impact on Go Air, Jet.
 - Same thing happened when DOCOMO entered telecom market.
 - Entry of Reliance Media Entertainment wiped out many players from the market – latest being ‘Network 18’

Frauds & Management Responsibility - Key Drivers.....

- Appointment of Internal Auditor – u/s 138 – though applicable to cos. Having turnover > 200 cr OR borrowings > 100 cr – others need to have Internal Audit function in place.
- Impact of pending litigations in financial statements – u/s 134.
- Provision for material foreseeable losses – like derivative contracts.

Frauds & Management Responsibility - Key Drivers.....

- Constitution of Vigil Mechanism – u/s 177(9)
- It is similar to Whistle Blower Mechanism
- Difference is - policy must provide for direct access to Chairman of Audit Committee OR director responsible for such function
- **Satyam in case** – how other employees could not find it out when their salaries were delayed

Frauds & Management Responsibility - Key Drivers.....

- Sec 447 - Fraud means – in relation to the affairs of the company or any body corporate, includes any act, omission, concealment of any fact or abuse of position committed by any person..... with intent to deceive, to gain undue advantage from, or to injure the interest of the company, its shareholders, creditors
- **It is much wider than Contract Act provision**

Frauds & Management Responsibility - Key Drivers.....

- Sec 448 – False Statement – if in any return, report certificate, financial statement, prospectus – makes a statement which is false in any material particulars, knowing it to be false OR omits any material facts, knowing it to be material.
- Show me how you will escape?
- Only options is to be diligent, prudent and update.
- Of late RBI has come out with circular making training of management of Co-operative banks and Co-operative Credit Societies mandatory.

Frauds & Management Responsibility - Key Drivers.....

- Sec 449 – Punishment for False evidence – upon any examination on oath or affidavit –
- **Can Dhoni be booked by India Cement for suppression of material facts**

The Companies (Amendment) Act, 2015 – Salient features

- Minimum capital requirement – not applicable
- Co. need not have common Seal. (Sec9) – where co does not have common seal – any two directors OR 1 director and co. sec can sign docs on behalf of the company. (Sec 22)
- No need to obtain commencement of business Certificate. (Sec 11)
- Sec 117 – though resolutions are filed with MCA u/s 179 – such docs may not be available for inspection to public.(not in Public Domain)

The Companies (Amendment) Act, 2015 – Salient features

- Sec 123 – No dividend shall be declared unless co provides for last year losses & depreciation.
- Sec 124 – **if dividend is not claimed in 7 years** then shares can be transferred to Investor Education Fund.
- Sec 134 – if auditors have reported frauds then same to be reported in D'Report. Frauds of certain size auditors to report to central Govt. (Sec 143)

The Companies (Amendment) Act, 2015 – Salient features

- Sec177 – Audit Committee can pass omnibus resolution for related parties transactions.
- When paid up capital of a co is 10 cr or more – RPT – **no special resolution is required.**
- **Transaction between Holding & 100% Sub. will not require shareholders approval.**

Exemptions for Private. Cos.

- Sec 2(76) – if Pvt co is holding/subsidiary/associate co/step down subsidiary, - **it will not be termed as Related Party.**
- Sec 43 – types of Capital –
- Sec 47 – voting Rights –
- Sec 62(1)(a) – Requirement offering shares to the existing shareholders –
- Sec 62(1)(b) – ESOPs - instead of Special Reso, now Ordinary Reso is ok.
- **Sec 67 – Giving of loan to purchase shares – If no body corporate has invested any money / if borrowings is less than 2 times paid up cap or 50 cr whichever is less and has not defaulted on repayment of any borrowings.**
- Sec 73(2) – Acceptance of deposits from Members – if such deposits do not exceed 100% of paid-up cap & free reserves.

Exemptions for Private. Cos.

- Sec 101 to 107 & 109 – pertaining to General Meetings – Notice, explanatory statement, Chairman, proxies, demand for poll – shall apply unless..... **Articles provide otherwise – How Articles can provide otherwise, it will become ultra virus, may be betterment provisions can prevail in AOA like more no of days notice**
- Sec117 – certain resolution under sec 179(3) – not required to be filed by Pvt. Co. – No MGT-14.
- Sec141(3)(g) – appointment Auditors – **limitation of 20 co. – pvt. Co/OPC/dormant co./small co - not to be counted.**
- Sec160, 162 – Notice of appointment of directorship, voting individually – **not required for Pvt co.**

Exemptions for Private. Cos.

- Sec180 – (Sec293 of 1956) – Restrictions on Powers of the Board –
- Sec184(2) – Related Party Transaction – where director holds more than 2% of the paid up cap of other body corporate / with firm, entity where director is partner, member, owner
- Sec185 – loans to directors – whole section is not applicable.
- **Sec 188(1) – when voting is done in shareholders meeting on related party transaction - interested party can not vote – not applicable to pvt co.**
- Sec 196 (4) &(5) – requirement of shareholders approval –
- Sec 203(3) – not to appoint KMP in more than one co. – **now can appoint.**



Keep in touch

- CS Anant Amdekar –

THANK YOU