
Companies Act 2013

A Critical Analysis

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The Pencil Parable

- Pencil Parable

Looking Back

⑩ Companies Act 1956

- ⑩ 658 Sections (Effectively 881 Sections)
- ⑩ 16 Schedules
- ⑩ 66 Definitions
- ⑩ 34 set of Rules & Regulations

Looking Forward

⑩ Companies Bill 2009

- ⑩ 426 Sections

- ⑩ No Schedules

- ⑩ 93 Definitions

- ⑩ Phrase “as may be prescribed” appeared “235 times” in the Bill

Looking Forward

⑩ Companies Act 2013

- ⑩ 470 Sections

- ⑩ 7 Schedules

- ⑩ 95 Definitions

- ⑩ Phrase “as may be prescribed” appears “346 times” in the Bill

- ⑩ 46 sections of Part IX A of Companies Act, 196 relating to Producer Companies will continue to apply

Companies Act 2013 - Status

- President's Assent on 29th August 2013
- 98 Sections notified on 12th September 2013
- Removal of Difficulties order issued on 20th September 2013 regarding implementation of Sections 24, 58 and 59
- Draft Rules have been notified - 1st Phase (16 Chapters), 2nd Phase (9 Chapters), 3rd Phase (3 Chapters), 4th Phase (1 Chapter), 5th Phase (Winding-up) and 6th Phase (Cost Rules) - <http://ncbfeedback.mca.gov.in/>
- Feedback on 5th Tranche by 19.12.12 & 6th tranche by 6.12.13
- Draft Forms have also been uploaded

Companies Act 2013 - Status

- Applies to whole of India
- Central Government will notify date of applicability
- Different dates may be appointed for different provisions
- Applies to all banking, insurance and electricity companies also so long provisions are not inconsistent with Special Acts.

Understanding Layout

- ⑩ Divided in to 29 chapters
- ⑩ Incorporation, MoA, AoA – Chapter II – Sections 3 to 22
- ⑩ Prospectus – Chapter III – Sections 23 to 42
- ⑩ Share Capital – Chapter IV – Sections 43 to 72
- ⑩ Public Deposits – Chapter V – Sections 73 to 76
- ⑩ Management & Administration – Chapter IVI – Sections 88 to 122
- ⑩ Accounts – Chapter IX – Sections 128 to 138
- ⑩ Audit & Auditors – Chapter X – Sections 139 to 148

Understanding Layout

- ⑩ Directors, Board & Remuneration – Chapters 11, 12 and 13 – Sections 149 to 205
- ⑩ Inspection, Investigation – Chapter 14 – Sections 206 to 229
- ⑩ Mergers – Chapter 15 – Sections 230 to 240
- ⑩ Oppression and Mismanagement – Chapter 16 – Sections 241 to 246
- ⑩ Revival – Chapter 19 – Sections 253 to 269
- ⑩ Winding –up – Chapter 20 – Sections 270 to 378
- ⑩ Foreign Companies – Chapter 21 – Sections 379 to 393

Understanding Layout

- ⑩ Government Companies – Chapter 22- Sections 394 & 395
- ⑩ NCLT – Chapter 27 – Sections 407 to 434
- ⑩ Special Courts – Chapter 28 – Sections 435 to 446
- ⑩ Miscellaneous - Chapter 29 – Sections 447 to 470
- ⑩ Schedule I – Table A to I
- ⑩ Schedule II – Depreciation
- ⑩ Schedule III – Balance Sheet
- ⑩ Schedule IV – Code for Independent Directors
- ⑩ Schedule V – Managerial Personnel
- ⑩ Schedule VI – Infrastructural Projects

New Definitions

⑩ Associate Company [2(6)]

- ⑩ In relation to other company, means a company in which that other company has significant influence
- ⑩ Significant Influence means control
 - ⑩ 20% of total share capital, or of
 - ⑩ Business decisions under an agreement
- ⑩ Excludes Subsidiary Company
- ⑩ Includes Joint Venture Company

New Definitions

⑩ Director [2(34)]

- ⑩ Director means the director appointed to the Board of Directors of the Company
- ⑩ Director includes any person occupying the position of a director by whatever name called [2(26) of Companies Act, 1956]

⑩ Company Liquidator [2(23)]

- ⑩ Panel of Professionals

New Definitions

⑩ Key Managerial Personnel [2(51)]

- ⑩ CEO or MD or Manager

- ⑩ Company Secretary

- ⑩ Whole-time director

- ⑩ CFO

- ⑩ Such other officer as may be prescribed

New Definitions

⑩ Officer in default [2(60)]

- ⑩ Whole-time Director
- ⑩ Key Managerial Personnel
- ⑩ No KMP, then specified director, else all directors
- ⑩ Any person in accordance with whose advice, directions or instructions, the Board is accustomed to act
- ⑩ Every Director, who is aware of such contravention by virtue of receipt of any proceedings of the Board
- ⑩ Share Transfer Agents, Registrars and Merchant Bankers, in respect of issue or transfer of any shares

New Definitions

⑩ Related Party [2(76)]

- ⑩ Director or his relative
- ⑩ KMP or his relative
- ⑩ Firm – Director, Manager or relative is partner
- ⑩ Private Company – Director or Manager is a member or director
- ⑩ Public Company – Director or Manager is a director or holds more than 2% either himself or through his relatives
- ⑩ Body Corporate or Person – Company is accustomed to act under their direction – Excludes Professional Advise

New Definitions

⑩ Related Party [2(76)]

- ⑩ Holding, Subsidiary or Associate Company
- ⑩ Subsidiary of a holding company to which it is also a subsidiary
- ⑩ Such other person , as may be prescribed
 - ⑩ (1) a director or key managerial personnel of the holding, subsidiary or associate company of such company or his relative;
 - ⑩ (2) any person appointed in senior management in the company or its holding, subsidiary or associate company i.e. personnel of the company or its holding, subsidiary or associate company who are members of core management team excluding Board of directors comprising all members of management one level below the executive directors, including the functional heads.

New Definitions

⑩ Relative [2(77)]

- ⑩ Members of HUF

- ⑩ Husband and wife

- ⑩ Related in a manner as may be prescribed

- ⑩ 15 categories prescribed – 1 new addition

- ⑩ Spouse, Father, Father's father, Father's mother, Mother, Mother's mother, Mother's father, Son, Son's wife, Son's son, Son's daughter, Daughter, Daughter's husband, Brother, Sister

- ⑩ 8 Removed – Son's son's wife, Son's daughter's husband, Daughter's son, Daughter's Son's wife, Daughter's daughter, Daughter's daughter's husband, Brother's wife, Sister's husband

New Definitions

- ⑩ Small Company [2(85)]
 - ⑩ Other than a Public Company
 - ⑩ PUC does not exceed 50 lakhs or as may be prescribed (not exceeding 5 Crores)
 - ⑩ Turnover does not exceed Rs. 2 Crores or prescribed amount (not exceeding Rs. 20 Crores)
 - ⑩ Not applicable to holding or subsidiary company

New Definitions

- ⑩ Subsidiary Company [2(87)]
 - ⑩ Controls the composition of the BOD
 - ⑩ Controls more than one-half of Total Share Capital either alone or through subsidiaries
 - ⑩ Chain Subsidiaries – Layers to be prescribed

Annual Return (Section 92)

Particulars as on date of close of financial year

New Particulars

- Details of meetings of Board, Committees

- Remuneration to Directors and key managerial personnel

- Penalties imposed/compounding done

- Matters as may be prescribed

To be signed by 1 director and company secretary or CS in practice (Every Company)

OPC and Small Company – Signed by CS. If no CS, then director

Annual Return (S.92)

- ⑩ Extract of Annual Return to form part of Board's Report?
- ⑩ To be filed within 60 days of AGM
- ⑩ Failure to file – Fine of Rs. 50,000/- Min, Rs 5 lakhs Max., imprisonment for 6 months
- ⑩ To be certified by CS in practice – Listed Companies or Companies having prescribed paid-up capital and turnover
 - ⑩ If CS certified wrongly – Fine – Min. 50,000/-, Max. Rs. 5 lacs

AGM (Section 96)

- ⑩ Every Year AGM to be held
- ⑩ Gap not to exceed 15 months between 2 AGM's
- ⑩ First AGM – 9 months from the close of FY, else 6 months
- ⑩ OPC not to hold AGM
 - ⑩ What is the time schedule for OPC to file Annual Return?
- ⑩ Time fixed – 9.00 AM to 6 PM
- ⑩ Can be held on Sundays and Public Holidays also
- ⑩ Cannot be held on National Holidays

AGM

⑩ Quorum for General Meetings

⑩ Public Companies

- ⑩ 5 in case of 1000 members
- ⑩ 15 in case of 1001-5000 members
- ⑩ 30 in case of more than 5000 members

⑩ Private Companies – 2

⑩ Report on General Meeting

- ⑩ By Listed Public Companies
- ⑩ To be filed with ROC within 30 days
- ⑩ Fine – Min 1 Lakh Max. 5 Lakhs

Directors

⑩ Minimum

- ⑩ Public – 3
- ⑩ Private – 2
- ⑩ OPC – 1

⑩ Maximum – 15

- ⑩ To appoint more than 15, Special Resolution is required
- ⑩ One director to be ordinarily resident in India – 182 days in India in preceding financial year

Directors

⑩ At least one Women Director

- ⑩ Listed Company

- ⑩ Public Company having

 - ⑩ PUC – Rs 100 Crores or more; or

 - ⑩ Turnover – Rs. 300 Crores or more

- ⑩ Listed Companies to comply within one year of commencement of this provision

- ⑩ Other Public Companies to comply within 3 years of commencement of this provision

Directors

- ⑩ Maximum number of directorship (S.165)
 - ⑩ Overall 20 including private companies
 - ⑩ Directorship in Public Companies cannot exceed 10
 - ⑩ Private Companies, which are subsidiary or holding of a public company, will be counted in the figure of 10 meant for public companies
 - ⑩ Includes Alternate Directorship also
 - ⑩ Director to choose companies within one year if he holds directorships in more companies
 - ⑩ Intimate Company and Registrar of his resignation due to Section 165

Directors

⑩ 1/3rd directors to be independent

⑩ Listed Companies

⑩ Public Companies

⑩ PUC – Rs. 100 Crores or more; or

⑩ Turnover –Rs. 300 Crores or more;

⑩ Aggregate of loans, borrowings, debentures, deposits –
Exceeding Rs. 200 Crores

⑩ Existing Companies – To comply within 1 year

Nominee Director

- Nominee Director
 - Not defined in Companies Act, 1956
 - Companies Act 2013
 - A director nominated by any financial institution pursuant to law, agreement or appointed by Govt. or any other person to represent its interests

Independent Directors – Companies Act 2013

⑩ Independent Director defined [S.149(6)]

- ⑩ Integrity certificate
- ⑩ Disqualifications
- ⑩ Qualifications
- ⑩ Other than Nominee Director, Managing Director or Whole-time Director

⑩ Integrity & Experience

- ⑩ In the opinion of the Board is a person of integrity and possesses relevant experience and expertise

Independent Directors – Companies Act 2013

⑩ Disqualifications

- ⑩ Not a promoter of the company, holding, subsidiary or associate companies
- ⑩ Not related to promoters or directors of the company, holding, subsidiary or associate companies
- ⑩ No pecuniary relationship
 - ⑩ Company, holding, subsidiary or associate company
 - ⑩ Promoters or directors of such companies
 - ⑩ During 2 immediately preceding financial years or during current financial year

Independent Directors – Companies Act 2013

⑩ Disqualifications

- ⑩ None of the relatives has or had pecuniary relationship or transaction with
 - ⑩ Company, holding, subsidiary or associate company
 - ⑩ Promoters or directors of such companies
- ⑩ Transaction should not be more than 2 % or more of its gross turnover or total income or Rs. 50 lakhs or such higher amount as may be prescribed, whichever is lower
- ⑩ During 2 preceding financial years or during the current FY

Independent Directors – Companies Act 2013

⑩ Disqualifications

⑩ Neither himself nor any of his relatives

- ⑩ Is or was a KMP or Employee of company, holding, subsidiary or associate company in any of the 3 FY immediately preceding the financial year in which he is proposed to be appointed
- ⑩ Is or was an employee or proprietor or partner
 - ⑩ of a firm of auditors or company secretaries or cost auditors of the company or its holding, subsidiary or associate company
 - ⑩ any legal or consulting firm that has or had any transactions of 10% or more of the gross turnover of such firm
- ⑩ In any of the 3 FY immediately preceding the financial year in which he is proposed to be appointed

Independent Directors – Companies Act 2013

⑩ Disqualifications

- ⑩ Holds with relatives 2% or more of the total voting power of the company
- ⑩ Chief Executive or Director, by whatever name called, of any non-profit organisation that
 - ⑩ receives 25% or more of its receipts from that company or any of its promoters, directors, or holding, subsidiary or associate company
- ⑩ Holds more than 2% or more of the total voting power of the company

Independent Directors – Companies Act 2013

⑩ Qualifications

- ⑩ Possess appropriate balance of skills, experience and knowledge in one or more fields of finance, law, management, sales, marketing, administration, research, corporate governance, technical operations or other disciplines related to company's business
- ⑩ Declaration by Independent Director at first meeting after appointment and first meeting every FY or whenever there is change in status
- ⑩ Company and Independent Director to abide by Schedule IV

Independent Directors – Companies Act 2013

⑩ Remuneration

- ⑩ No stock options

- ⑩ Sitting Fee

 - ⑩ Upto Rs. 1 Lakh as decided by Board

- ⑩ Reimbursement of expenses for attending board meeting

- ⑩ Profit related commission, as approved by members

Independent Directors – Companies Act 2013

- ⑩ 5 year term, renewable for another 5 year by special resolution then 3 year cooling off period
- ⑩ Term to start afresh - present tenure not to be counted
- ⑩ Making Independent directors liability proof unless fraud done with knowledge attributable through board processes, consent and connivance or not acting diligently
- ⑩ Creation of panel or data bank by authorised institutions
- ⑩ Procedure of selection - ‘as may be prescribed’

Directors

- Disqualification of Directors (S. 164)
 - If a person is convicted and sentenced for seven years or more, then he cannot become a director in any company
 - If a person is convicted of offence dealing with related party transactions under section 188 at any time during the last preceding 5 years
- Existing 274(1)(g) extended to all companies for default in any company

Directors

- Vacation of Office (S.167)
 - Absenting from board meetings for 12 months period (with or without leave of absence)

Duties

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- (1) Subject to the provisions of this Act, a director of a company shall act in accordance with the company's articles.
- (2) A director of a company shall act in good faith in order to promote the objects of the company for the benefit of its members as a whole, and in the best interest of the company.
- (3) A director of a company shall exercise his duties with due and reasonable care, skill and diligence.

Duties

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- (4) A director of a company shall not involve in a situation in which he may have a direct or indirect interest that conflicts, or possibly may conflict, with the interest of the company.
 - (5) A director of a company shall not achieve or attempt to achieve any undue gain or advantage either to himself or to his relatives, partners, or associates.
 - (6) A director of a company shall not assign his office and any assignment so made shall be void.

Duties

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- (7) Any director who contravenes the provisions of this section shall be punishable with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees:

Resignation (S. 168)

- ❑ Acceptance of Resignation by the Board is not mandatory
- ❑ Director resigning to intimate the Registrar within 30 days of his resignation
- ❑ Resignation takes effect from the date on which notice is received by the company or the date specified by the director, whichever is later

Board Meetings

- ⑩ First Board Meeting within 30 days
- ⑩ 4 Board Meetings every year by each company
- ⑩ Gap between two meetings - not more 120 days
- ⑩ Board Meeting through Video Conferencing or audio visual means
- ⑩ Minimum 7 days' notice
- ⑩ Quorum – higher of $1/3^{\text{rd}}$ or 2

Audit Committee (S. 177)

- Listed Company
- Other Public Company having
 - PUC of Rs. 100 crores or more
 - Borrowings of Rs. 200 crores or more
- Audit Committee
 - 3 Directors – Independent directors in majority
 - Majority of directors shall be financially literate
 - Reconstituted within one year

Audit Committee

■ Terms of Reference

- Auditor Appointment
- Review independence and performance of Auditor
- Examination of financial statement
- Related Party Transaction
- Scrutiny of Inter-corporate loans and investments
- Valuation of undertakings
- Internal Control
- End Use of Public Funds

Audit Committee

■ Vigil Mechanism [S. 177(9)]

- Listed Company
- Class of companies
 - Deposit from Public ;and
 - Borrowings from Banks and Fis in excess of Rs. 50 crore
- To report genuine concerns of directors and employees
- Safeguard against victimization of whistle blower

Powers of Board (s.179)

- Resolution at Board Meetings only – Additional business
 - Approving Financial Statement and Board Report
 - Diversification of Business
 - Approving Amalgamation, merger or reconstruction
 - Takeover or Acquisition in another company
 - Issue of Securities
 - to make political contributions;
 - to fill a casual vacancy in the Board;
 - to enter into a joint venture or technical or financial collaboration or any collaboration agreement;

Powers of Board (s.179)

- Resolution at Board Meetings only – Additional business
 - to commence a new business;
 - to shift the location of a plant or factory or the registered office;
 - to appoint or remove key managerial personnel (KMP) and senior management personnel one level below the KMP;
 - to appoint internal auditors; to adopt common seal;
 - to take note of the disclosure of director's interest and shareholding;

Powers of Board (s.179)

- Resolution at Board Meetings only – Additional business
 - To sell investments held by the company (other than trade investments), constituting five percent or more of the paid – up share capital and free reserves of the investee company;
 - to accept public deposits and related matters and;
 - to approve quarterly, half yearly and annual financial statements.

Contribution (S.181 & 182)

- Bonafide Charitable and Other funds
 - 5% of average net profit of 3 preceding FYs
- Political Contributions
 - 7.5% of average net profit of 3 preceding FYs

Loans to Directors

- Section 185 – Loan to Interested Director and any other person in whom director is interested
- Exceptions
 - Loan to MD or WTD allowed
 - Part of conditions of service extended by company to all employees
 - Pursuant to any scheme approved by Special Resolution
- Not applicable to Banking and Finance Company

Loan and Investment by Company

- Section 186
- No investment beyond two layers of investment allowed
- Limits of 60% or 100% now include securities premium
- Exemption of loan to be provided by a holding to its wholly owned subsidiary has been withdrawn

Related Party Transaction

- New Additions
 - ▣ Leasing of Property
 - ▣ Selling, buying of Property
 - ▣ Appointment of any agent

Managerial Personnel

- ⑩ Appointment by Board
- ⑩ Special Resolution at next AGM
- ⑩ CG approval if conditions are variance with Schedule V

Key Managerial Personnel

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- ⑩ Mandatory for following companies
 - ⑩ Listed Company
 - ⑩ PUC more than 5 Crore
- ⑩ MD or CEO or Manager or WTD
- ⑩ Company Secretary
- ⑩ CFO

NCLT & NCLAT

- President – Current or Retired High Court Judge for 5 years
- Judicial Member
 - ▣ Judge of a High Court
 - ▣ Judge of a District Court for 5 years
 - ▣ Advocate for 10 years
- Technical Member
 - ▣ 15 years practicing CA, CS or CMA

NCLT & NCLAT

□ Technical Member

- Person of proven ability, integrity and standing having special knowledge and experience, of not less than 15 years in law, industrial finance, industrial management or administration, industrial reconstruction, investment, accountancy, labour matters or such other disciplines related to management, conduct of affairs, revival, rehabilitation and winding-up of companies

NCLT & NCLAT

- Benches of Tribunal
 - Principal Bench in New Delhi
 - Each Bench to have 2 members – 1 Judicial Member and 1 Technical Member
 - Single Judicial Member can also form a Bench
- Appeal from NCLT will lie before NCLAT
 - To be filed within 45 days
- Appeal against NCLAT order will lie before Supreme Court – To be filed within 60 days

Compromises, Arrangements & Amalgamations

- The Act deals with the following types of merger (including demerger)
 - ▣ Merger of companies (S. 232);
 - ▣ Merger of small companies and merger between holding and its wholly-owned subsidiary (Fast track mergers) (S. 233);
 - ▣ Merger of Indian company and Foreign company (Cross Border Merger) (S. 234);
 - ▣ Merger in public interest (S.237);
 - ▣ Offer of Takeover of unlisted companies (S. 230)

Mergers, Amalgamation & Takeover

- Introduction of NCLT (Powers of High Court vested in NCLT).
- Auditors' certificate on accounting treatment if any, proposed in the scheme of compromise or arrangement is in conformity with the accounting standards.
- Shareholders or creditors can now vote through postal ballot for approval of the scheme of arrangement.
- Set-off of fees paid on authorized capital by transferor company , expressly stated.

Mergers, Amalgamation & Takeover

- Valuation Report is required from a registered valuer which shall be given to shareholders/creditors along with the notice of the meeting to be called.
- Scheme shall clearly indicate an appointed date from which it shall be effective and the scheme shall be deemed to be effective from such date and not a date subsequent to the appointed date

Enhanced Disclosures

- Notice of the meeting shall be accompanied by following:
 - ▣ statement disclosing details of the compromise or arrangement,
 - ▣ Effect on creditors,
 - ▣ Effect of the compromise or arrangement on any material interests of the directors of the company or the debenture trustees

Enhanced Disclosures

- Notice of the meeting shall be accompanied by following:
 - Draft of the proposed terms of the scheme drawn up and adopted by the directors of the merging company;
 - Confirmation that a copy of the draft scheme has been filed with the Registrar;
 - A report adopted by the directors of the merging companies explaining effect of compromise on each class of shareholders,

Enhanced Disclosures

- Notice of the meeting shall be accompanied by following:
 - ▣ key managerial personnel;
 - ▣ promoters and non-promoter shareholders laying out in particular the share exchange ratio, specifying any special valuation difficulties;
 - ▣ the report of the expert with regard to valuation, if any;

Enhanced Disclosures

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- Notice of the meeting shall be accompanied by following:
 - a supplementary accounting statement if the last annual accounts of any of the merging company relate to a financial year ending more than six months before the first meeting of the;
 - Notice to be sent to Central Government, Income Tax authorities, Reserve Bank of India, Securities and Exchange Board of India, Registrar, Respective Stock Exchange(s), Official Liquidator, Competition Commission of India, Other sectoral regulators which are likely to be affected by the compromise or arrangement;
 - Shall also be placed on the website of the Company.

Miscellaneous

- Cross Border Mergers - A foreign Company incorporated in such countries a may be notified from time to time by the central Government, may with the prior approval of Reserve Bank of India, merge into an Indian Company or vice-versa.
- A buyback in any compromise or arrangement shall comply with the Section 68 of the Act.
- Minimum threshold for raising objection to the scheme of arrangement -
 - Any person holding not less than ten per cent of the shareholding,
 - Any creditor having outstanding debt amounting to not less than five per cent of the total outstanding debt

Miscellaneous

- Merger/demerger of listed company with unlisted company:
 - The transferee unlisted company shall remain unlisted until it becomes a listed company;
 - If shareholders of listed company decide to opt out of the transferee, provision shall be made for payment of value of shares held by them
 - Valuation shall be as per regulations framed by SEBI
- An application can be made to the Tribunal for making compromise or arrangement involving CDR scheme subject to fulfillment of certain conditions .

Fast Track Mergers

- Mergers or amalgamations between two or more-
 - ▣ small companies,
 - ▣ a holding company and its wholly owned subsidiary, or
 - ▣ Such other class or classes of companies as may be prescribed

may be sanctioned without obtaining the approval of NCLT
subject to the certain conditions:

- ▣ a notice of the proposed scheme inviting objections or suggestions, if any, from the Registrar and Official Liquidators or persons affected by the scheme within thirty days,

Fast Track Mergers

- any objection or suggestion shall be considered at the general meeting of members holding at least ninety per cent of total no of shares,
- a declaration of solvency to be filed by the transferor & transferee, with the Registrar,
- scheme is approved by majority representing nine-tenths in value of the creditors or class of creditors of respective companies indicated in a meeting convened by the company by giving a notice of twenty-one days along with the scheme to its creditors for the purpose or otherwise approved in writing.

Fast Track Mergers

- Transferee Company to file copy of scheme with CG, ROC and OL
- If there is no objection, CG will register the scheme and confirmation will be issued
- In case of objections, CG will file the application before NCLT if in its opinion it is not in public interest or in the interest of creditors

Winding Up by the Tribunal

Circumstances in which company may be wound up:



Deletion:



In respect of reduction in number of members



Default in filing of Statutory Report to the Registrar



Non-commencement of business



Grounds Added:



If on an application made by the Registrar or any other person authorized by the Central Govt., the Tribunal is of opinion that:

- a) Affairs of the Company have been conducted in a fraudulent manner,
- b) Company was formed for fraudulent & unlawful purposes,
- c) Persons concerned in the formation or management of its affairs have been guilty of fraud, misfeasance or misconduct & it is proper that the company be wound up

Winding Up by the Tribunal

- Company shall be deemed to be unable to pay its debts:
 - ▣ Amount unchanged--- Exceeding Rs. 1 Lacs
 - ▣ Restructuring is also added as one of the tool which a Company can use on receipt of demand to repay the debt.
- Appointment of Company Liquidator
 - ▣ The Professionals on the panel must be having atleast 10 years experience in company matters & such other qualifications as may be prescribed.
- Provisions for taking views from the Secured Creditors & workmen has been omitted to make the winding up process faster

Summary Procedure for Liquidation

- This is a new provision which seeks to provide for faster winding up of company through Summary procedure for companies:
 - ▣ Having assets of book value not exceeding one crore;
 - ▣ Such Class or classes of companies as may be prescribed
- Central Government shall appoint the Official Liquidator
- The Official Liquidator shall take into his custody or control all assets, effects & actionable claims

Summary Procedure for Liquidation

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- The Official Liquidator shall within 30 days of his appointment submit a report to the Central Government including a report whether in his opinion, any fraud has been committed in promotion, formation or management of the affairs of the Company or not
 - Any further investigation may be ordered if fraud is detected
 - Central Government may order that winding up may be proceeded

Company Liquidators

- Tribunal can appoint Official Liquidator or Company Liquidator from a panel of liquidators
- Panel to consist of CA, Advocates, CS, Cost Accountants, firms of bodies corporates having such CA, Advocates etc having 10 years' experience



Thank you for your patience

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