



Companies Act, 2013

By Dhiren Shah & Co



Introduction

- Companies Act, 2013 contains 29 chapters, 470 Sections, 7 Schedules
- New Concept introduced are One Person Company, Concept of Small Companies, Woman Director, Independent Directors, Secretarial Audit, Fast Track Merger, key managerial personnel, Setting up of NCLT & NCLAT, Corporate Social Responsibility, Appointment of Auditors, etc
- Mandatory rotation of auditors for the listed and other specified class of companies
- Individual auditor to rotate after a one term of five consecutive years. Audit firm to be rotated after two terms of five consecutive years



Key Provisions:

- Section 73 – 76 & Companies (Acceptance of Deposits) Rules, 2014 –Acceptance of Deposits by Companies
- Section 185 – Loans to Directors and their relatives
- Section 186 & Rule 11 & 12 of the Companies (Meetings of Board & its Powers) Rules, 2014– Loans, Investments & Guarantees by the Company
- Section 188 & Rule 15 of the Companies (Meetings of Board and Its Powers) Rules, 2014 – Related Party Transactions

Section 73-76- Deposits

- Private Companies can not accept deposit from **public** according to the definition of Private Companies under Companies Act, 2013.
- Company can accept deposits from:
 - Directors or their Relatives of Directors
 - Any other Company
 - Loan from Banks or Financial Institutions
 - Amount received in the course of business
 - Company can accept deposits from members only after passing resolution in general meeting and subject to fulfillment of Companies (Acceptance of Deposits) Rules, 2014
- Punishment for Contravention of Section 73 to 76:

Punishable with fine of crore rupees, which may extend to ten crore rupees & defaulting officer shall be punishable with imprisonment of seven years or with fine of twenty five lakh rupees, which may extend to two crore rupees or both

Section 185- Loan to directors & their relatives

- No company shall directly or indirectly advance any loan, to any of its Directors or to any other person in whom Directors are interested or give any guarantee or Provide security in connection with any loan taken by him.

- “To any other person in whom Directors are interested means-
 - Any director of the lending company or its holding company or any partner or director of such director;
 - Any firm i which such director or its relative is partner;
 - Any private company of which such director is director member;
 - Any body corporate in which such director holds 25% or more voting power along whether solely or with one or more directors; or
 - Any body corporate which is acting as per direction of such director

Section 186- Loans & Investments by the company

- Company can give loan to any person or body corporate or give guarantee or provide security and acquire securities of other companies only after obtaining approval in Board of Directors meeting
- If the amount as referred above exceeds sixty percentage of paid up share capital and free reserves or one hundred percentage of free reserves of the company, whichever is more then prior approval by special resolution is required in general meeting
- Where any term loan is subsisting & amount is beyond limit as prescribed above, prior approval of public financial institution is to be obtained
- Interest Rate on Loan should not be lower than prevailing interest rate on Government security



Section 188-Related Party Transaction

- Company can not enter into contract or arrangement with a related party unless consent of board of directors is obtained and subject to such other conditions as may be prescribed in rules to the act
- Nothing contained above, shall apply if the transactions entered into are in the ordinary course of business or transactions are at arms length basis
- No member shall vote on resolution to approve contract or arrangement if such member is related party
- Relative” with reference to the other person means any one who is related to the other if,
 - they are members of HUF
 - they are husband & wife
 - One person is related to another as may be prescribed

Thank you

