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INDIAN COMPANIES ACT, 2013 – A NEW BEGINNING!

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The new Companies Act (hereinafter referred as CA2013) is replacing old Companies Act, 1956 (hereinafter referred as CA1956). The CA2013 makes comprehensive provisions to govern all listed and unlisted companies in the country. The CA2013 is partially made effective w.e.f. 12th September, 2013, by way of implementing 98 Sections and repealing the relevant sections corresponded with CA1956. Some of the Salient features of the CA2013 are as under:

1. **Democracy of Shareholders:** The CA2013 has introduced new concept of class action suits with a view of making shareholders and other stakeholders, more informed and knowledgeable about their rights.

2. **Supremacy of Shareholders:** The CA2013 focused and provide major aspect on approvals from shareholders on various significant transactions. The Government has rightly reduced the need for the companies to seek approvals to managerial remuneration and the shareholders have been vested with the power to sanction the limit.

3. **Strengthening Women Contributions through Board Room:** The CA2013 stipulates appointment of at least one woman Director on the Board of the prescribed class of Companies so as to widen the talent pool enabling big Corporates to benefit from diversified backgrounds with different viewpoints.

4. **Corporate Social Responsibility:** The CA2013 stipulates certain class of Companies to spend a certain amount of money every year on activities/initiatives reflecting Corporate Social Responsibility. There may be difficulties in implementing in the initial years but this measure would help in improving the Under-privileged & backward sections of Society and the Corporate would in fact gain in terms of their reputation and image in the Society.

5. **National Company Law Tribunal:** The CA2013 introduced National Company Law Tribunal and the National Company Law Appellate Tribunal to replace the Company Law Board and Board for Industrial and Financial Reconstruction. They would relieve the Courts of their burden while simultaneously providing specialized justice.

6. **Fast Track Mergers:** The CA2013 proposes a fast track and simplified procedure for mergers and amalgamations of certain class of companies such as holding and subsidiary, and small companies after obtaining approval of the Indian government.

7. **Cross Border Mergers:** The CA2013 permits cross border mergers, both ways; a foreign company merging with an India Company and vice versa but with prior permission of RBI.

8. **Prohibition on forward dealings and insider trading:** The CA2013 prohibits directors and key managerial personnel from purchasing call and put options of

shares of the company, its holding company and its subsidiary and associate companies as if such person is reasonably expected to have access to price-sensitive information (being information which, if published, is likely to affect the price of the company's securities). Earlier these provisions were contained in regulations framed by SEBI, as the capital market regulator. Now, it has also been informed that SEBI is expected to discuss changes in certain norms for listed firms so as to make them in line with the rules in the new Act.

9. **Increase in number of Shareholders**: The CA 2013 increased the number of maximum shareholders in a private company from 50 to 200.

10. **Limit on Maximum Partners:** The maximum number of persons/partners in any association/partnership may be upto such number as may be prescribed but not exceeding one hundred. This restriction will not apply to an association or partnership, constituted by professionals like lawyer, chartered accountants, company secretaries, etc. who are governed by their special laws. Under the CA1956, there was a limit of maximum 20 persons/partners and there was no exemption granted to the professionals.

11. **One Person Company**: The CA2013 provides new form of private company, i.e., one person company is introduced that may have only one director and one shareholder. The CA1956 requires minimum two shareholders and two directors in case of a private company.

12. **Entrenchment in Articles of Association:** The CA2013 provides for entrenchment of articles of association have been introduced.

13. **Electronic Mode**: The CA2013 proposed E-Governance for various company processes like maintenance and inspection of documents in electronic form, option of keeping of books of accounts in electronic form, financial statements to be placed on company's website, etc.

14. **Restriction on Composition**: Every company shall have at least one director who has stayed in India for a total period of not less than 182 (one hundred and eighty two) days in the previous calendar year.

15. **Independent Directors**: The CA2013 provides that all listed companies should have at least one-third of the Board as independent directors. Such other class or classes of public companies as may be prescribed by the Central Government shall also be required to appoint independent directors. No independent director shall hold office for more than two consecutive terms of five years.

16. **Serving Notice of Board Meeting**: The CA2013 requires at least seven days' notice to call a board meeting. The notice may be sent by electronic means to every director at his address registered with the company. The CA1956 did not prescribe any notice period to call the board meeting of a company.

17. **Duties of Director defined**: Under the CA1956, a director had fiduciary duties towards a company. However, the CA2013 has NOW defined the duties of a director.

18. **Liability on Directors and Officers**: The CA2013 does not restrict an Indian company from indemnifying its directors and officers like the CA1956.

19. **Rotation of Auditors**: The CA2013 provides for rotation of auditors and audit firms in case of publicly traded companies.

20. **Auditors performing Non-Audit Services**: The CA2013 prohibits Auditors from performing non-audit services to the company where they are auditor to ensure independence and accountability of auditor.

21. **Financial Year**: Every company's financial year will be the period ending on 31 March every year.

22. **Rehabilitation and Liquidation Process**: The entire rehabilitation and liquidation process of the companies in financial crisis has been made time bound under CA2013.

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