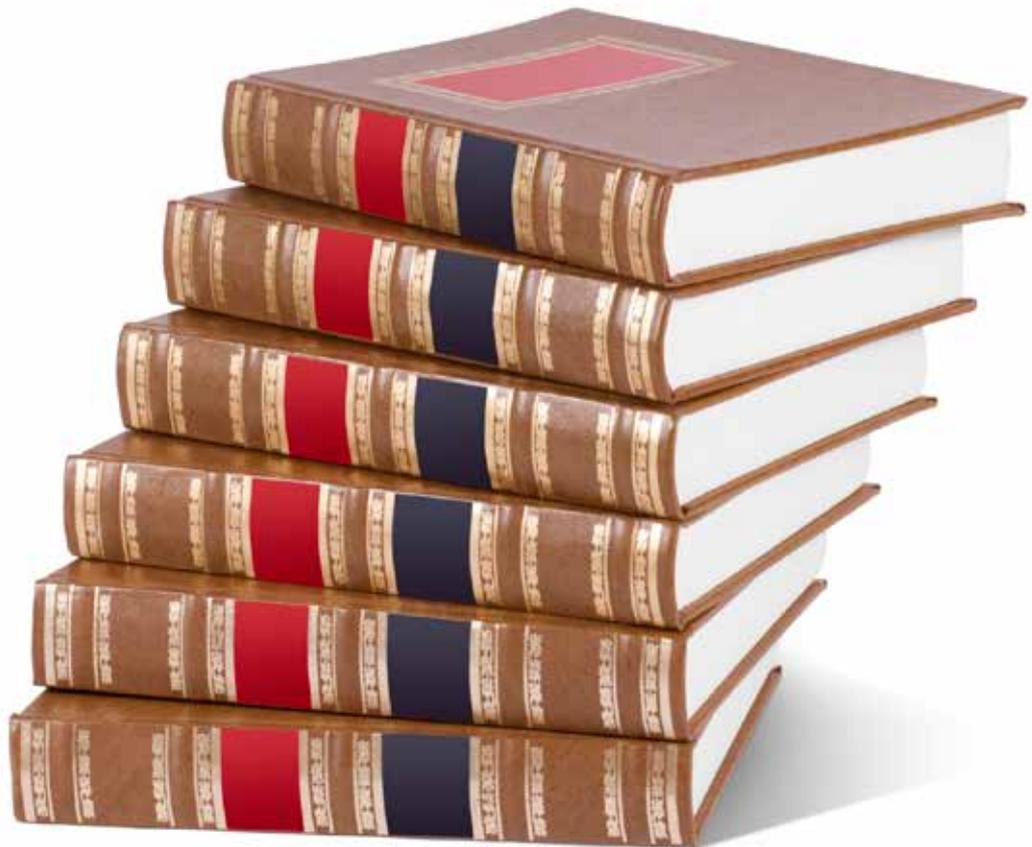


Companies Act, 2013

New rules of the game



Message

The current economic and regulatory environment in India is on the threshold of a major recast. Constant efforts are being made to amend and adapt the laws to suit the demands of modern times. The pivotal focus of all major reforms is directed towards simplification of the legal system to ensure that it is easy to understand, implement and enables business. The country has passed through a long span since the first Companies Act was enacted. A need has been felt to update and make it globally compliant and more meaning full in the context of investor protection and customer interest.

August 2013 marks a historic moment and the beginning of a new era for corporate India. The new Companies Bill has been passed by both the Houses of Parliament and signed by President of India. The new Act is a historic piece of legislation aimed at improving transparency and accountability in India's corporate sector. The new Companies Act will give this country a modern legislation, which will contribute to the growth and development of the corporate sector in India. The Act, when enacted, will allow the country to have a modern legislation for regulation of corporate sector in India. The Act, amongst other aspects provides for business friendly corporate regulation / pro-business initiatives, e-governance initiatives, good corporate governance, Corporate Social Responsibility (CSR), enhanced disclosure norms and accountability of management, stricter enforcement, audit accountability, protection for minority shareholders, investor protection and activism and better framework for insolvency regulation and institutional structure.

To provide the holistic view of New Companies Act, ASSOCHAM has come out with a study paper jointly with Deloitte on "**Companies Act - 2013 - New Rules of the Game**".

We wish to acknowledge the contribution made by the expert research team of Deloitte for their untiring efforts in preparing an extensive in-depth comprehensive study.

I am sure this study will give a rich insight and adequate knowledge to all the stakeholders.

I wish the Conference a great success.

With Best Wishes,



D. S Rawat
Secretary General
ASSOCHAM

September, 2013
New Delhi



Companies Act, 2013



Background

Companies Act, 2013 (2013 Act) has been assented by the President of India on 29 August 2013 and published in Official Gazette on 30 August 2013. 2013 Act empowers the Central Government to bring into force various sections from such date(s) as may be notified in the Official Gazette.

The 2013 Act stipulates enhanced self-regulations coupled with emphasis on corporate democracy and provides for amongst others, business friendly corporate regulation / pro-business initiatives, e-governance initiatives, good corporate governance, Corporate Social Responsibility (CSR), enhanced disclosure norms, enhanced accountability of management, stricter enforcement, audit accountability, protection for minority shareholders, investor protection and activism and better framework for insolvency regulation and institutional structure.

Ministry of Corporate Affairs (MCA), Government of India (GOI) has initiated the process to implement 2013 Act in consultation with concerned regulatory authorities, Ministry of Law & Justice and other stakeholders. In this regard, first set of draft rules have been placed for public comments on 9 September 2013. GOI decided to enforce the provisions of 2013 Act in phases. The provisions of the 2013 Act which require statutory or regulatory consultation or functioning of new bodies or prescription of relevant rules and forms will be brought in force after the preparatory action is completed. Keeping this in mind,

GOI has notified those provisions of 2013 Act which do not require such preparations. Accordingly, GOI has notified 98 sections of 2013 Act which will come into force effective 12 September 2013.

This document is prepared keeping the provisions of the 2013 Act and does not capture provisions of the Rules as the same are in Draft stage and are subject to change once the feedback of the stakeholders is received by MCA and incorporated in the final Rules.

"Prescribed" or "as prescribed" or "as may be prescribed" used in this document means the Rules as may be finalized by the CG.

The key highlights of the 2013 Act are summarized below.

Key Highlights

Types of companies

- Maximum number of members in a private company increased from 50 to 200
- Limit of number of members in an association or partnership (without incorporation) to be increased up to 100
- One Person Company (OPC) - a new vehicle for individuals for carrying on business with limited liability

Share capital

- For defined infrastructural projects, preference shares can be issued for a period exceeding 20 years

- Provisions relating to further issue of capital made applicable to all companies
- The terms for offer of securities, form and manner of "private placement" to be as prescribed
- Shares cannot be issued at a discount except sweat equity shares
- Time gap between 2 buy-backs shall be minimum 1 year

Deposits

- Stringent norms provided for acceptance of fresh deposits from members and public
- Any deposit accepted before the commencement of 2013 Act or any interest due thereon to be repaid within 1 year from the commencement of 2013 Act or from the date on which such payments are due, whichever is earlier.
- Credit rating made mandatory for acceptance of public deposits

Corporate Social Responsibility (CSR)

- 2% of average net profits of last 3 years to be mandatorily spent on CSR by companies having
 - net worth of ` 5 billion or more; or
 - turnover of ` 10 billion or more; or
 - net profit of ` 50 million or more

Audit and Accounting

- To align with the provisions of the Income tax Act, companies to have a uniform financial year - ending on 31 March each year
- Consolidation of financials for a company having a subsidiary, associate or a joint venture made mandatory
- National Financial Reporting Authority (NFRA) to be constituted by Central Government to provide for dealing with matters relating to accounting and auditing policies and standards to be followed by companies and their auditors
- Mandatory audit rotation for listed and prescribed classes of companies
- Restriction placed on provision of specified non-audit services by an auditor to ensure independence and accountability of the auditor
- Mandatory internal audit for prescribed classes of companies

Management, administration and corporate governance

- At least 1 director of a company shall be a person who has stayed in India for 182 days or more in the previous calendar year. Existing companies to comply with this provision within 1 year from the date of commencement of the 2013 Act.
- Listed and prescribed class of companies to have at least 1 woman director. Existing companies to comply with this provision within 1 year from the date of commencement of the 2013 Act.
- Prescribed class of companies to have whole-time Key Managerial Personnel (KMP)
 - Chief Finance Officer to be a whole time KMP for prescribed classes of companies
 - Whole time Director included in definition of KMP
- Electronic voting for Board and shareholders meetings introduced
- Following committees of the Board made mandatory for listed and prescribed classes of companies:
 - Audit committee
 - Stakeholder relationship committee
 - Nomination and Remuneration committee
 - Corporate Social Responsibility committee
- Director to vacate office on remaining absent from all the meetings of the Board of Directors held during 12 months with or without obtaining leave of absence
- Contents of Directors' Report elaborated. Directors to annually report on the existence and effective operations of systems on compliance with all applicable laws
- Secretarial audit mandatory for listed and prescribed classes of companies
- Approval of Central Government required for certain managerial remuneration

Related Party transactions

- Requirement of obtaining Central Government approval for related party transactions not required
- Approval of related party transactions by Board of Directors at Board meeting made mandatory
- Related party transactions to also require prior shareholder's approval by special resolution for companies having prescribed paid up capital or transactions exceeding prescribed amounts.
- Related party transactions to be disclosed in the Director's Report along with justification thereof

Inter corporate loans / investments

- Loans, guarantee and security made to any person (the 1956 Act dealt only with body corporate) will attract the 2013 Act compliance requirement
- Rate of interest on loan granted cannot be lower than the prevailing yield of 1 year, 3 year, 5 year or 10 year Government Security closest to the tenure of the loan
- The list of exemptions has been curtailed

Loan to Directors

- No company shall directly or indirectly advance any loan (including loan represented by a book debt) or give guarantee or provide security in connection with such loan to any director / related persons
 - An exception to the above rule is made for MD or a whole time director (WTD) if such loan is in accordance with the terms of services extended to all employees or is approved by shareholders by special resolution
- Provisions for loan to directors applicable to private companies

Mergers & Acquisitions

- Restriction placed on multi-layer investment subsidiaries
- Merger of Indian company with a foreign company allowed
- Fast track merger for small companies and between holding company and its wholly owned subsidiary introduced
- Person / group of persons holding 90% or more equity shares by virtue of amalgamation etc. can purchase the remaining equity shares of the company from minority shareholders
- Any valuation of shares / assets etc. required under 2013 Act to be performed by a Registered Valuer

Measures for investor protection

- Provisions relating class action suits introduced
- Exit options for minority holders on reorganization

National Company Law Tribunal (NCLT)

- 2013 Act replaces the High Court with a Tribunal to be known as NCLT, which will consist of Judicial and Technical members, as Central Government may deem necessary, to exercise and discharge the powers and functions conferred including

approval of merger, corporate reorganization, capital reduction, extension of financial year etc.

Miscellaneous

- Mandatory transfer of profits to reserves for dividend declaration dispensed
- Inability to pay debts will be considered as criteria for determining a sick company
- Provisions of revival and rehabilitation of sick companies to apply to all companies and not only to an "industrial company"
- Central Government to establish Serious Fraud Investigation Office for investigation of frauds relating to a company
- Any person representing the company is made liable for punishment for fraudulently obtaining credit facilities from any bank or financial institutions for making any false, deceptive or misleading statement, promise or forecast

Salient Features

The salient features of the 2013 Act are as follows:

Key Definitions

- Maximum number of members in a "private company" increased from 50 to 200.
- Private company which is a subsidiary of a public company shall be deemed to be a public company regardless of its status as private company by virtue of its AOA.
- "Financial year" of a company / body corporate means the period ending on 31st March every year. Where it is incorporated on or after 1st January of a year, FY means the period ending on 31st March of the following year, in respect whereof the financial statement is made up.
- "Net worth" means aggregate of paid-up share capital and all reserves created out of the profits and securities premium account as reduced by accumulated losses, deferred expenditure and miscellaneous expenditure not written off, as per the audited balance sheet. It shall exclude revaluation reserve assets, reserves created out of write-back of depreciation and amalgamation.
- "Small company" means a company, other than a public company, whose paid-up share capital does not exceed ` 5 million or such higher amount as may be prescribed which shall not exceed ` 50 million; or whose turnover as per its last profit & loss account

does not exceed ` 20 million or such higher amount as may be prescribed which shall not exceed ` 200 million.

- For reckoning a subsidiary company, exercise or control of more than 50% of total share capital (& not only equity capital) will have to be considered.

Incorporation of companies

- No association or partnership consisting of more than prescribed number of persons (not more than 100) shall be formed for the purpose of carrying on any business that has for its object the acquisition of gain by the association or partnership or by the individual members thereof, unless it is registered as a company or is formed under any other law for the time being in force. This rule is not applicable to an HUF carrying on any business and association or partnership formed by professionals who are governed by special acts.
- Before commencement of any business or exercising any borrowing power, newly formed company to file with ROC a prescribed declaration to the effect that
 - every subscriber has paid-in the value of shares subscribed to MOA;
 - paid-up share capital of the company is not less than the minimum prescribed; and
 - verification of its registered office
- Subscription money to be brought before commencement of business or borrowing by a newly formed company.
- Particulars of interest in other firms and bodies corporate, if any, in relation to the first directors is to be filed with ROC
- AOA may contain provisions for entrenchment to the effect that specified provisions of the AOA may be altered only if conditions or procedures as that are more restrictive than those applicable in the case of a special resolution, are met or complied with.

One Person Company (OPC)

- OPC means a company which has only one individual as a member
- A Company may be an OPC having a sole member. The memorandum of such OPC is required indicate the name of the person who shall become member in the event of death or incapacity of the sole member.
- OPC is required to specifically mention the word "one person company" below the name wherever it is used

2013 Act provides additional flexibility to OPC. Some of the relaxations provided to OPC are as under:

- Cash flow statement is not required
- Annual Return can be signed by CS or one director if there is no CS
- OPC should have minimum 1 director
- Board meeting of OPC is required to be held at least once in each half of a calendar year and the gap between the 2 meetings is not less than 90 days
- Provisions of board meeting, quorum and interested director shall not apply to OPC
- OPC need not hold an AGM
- Financial Statements can be signed by only one director

Share capital and debentures

- Authorized, subscribed and paid-up capital of a company to be mentioned in all notices, advertisement or other official publication or any business letter, billhead or letter paper.
- The provisions relating to issue of shares with differential rights as to dividend, voting or otherwise have been retained in 2013 Act. The conditions for issuance for such shares will be specified through the prescribed Rules
- Preference shares can be issued for a period exceeding 20 years for "infrastructural projects" (as defined).
- Issue of further redeemable preference shares in lieu of arrears of dividend or failure to redeem existing preference shares as per the terms of issue to also require approval of NCLT.
- Securities of any member in a public company shall be freely transferable. However, any contract or arrangement between 2 or more persons in respect of transfer of securities shall be enforceable as a contract.
- Pricing of a Preferential Issue of shares by a company to be determined by a RV. Conditions may be prescribed in rules for preferential issue by companies.
- Provisions relating to further issue of capital to be applicable to all types of companies.
- Conditions specified for issue of Bonus shares which are applicable to all companies. CG to also provide detailed Rules.
- Bonus shares cannot be issued in lieu of dividend.
- Issue of shares at a discount to its par value prohibited except in case of "sweat equity shares" issued to the employees of the Company.



- No offer for buy-back shall be made within a period of 1 year from the date of preceding buy-back.
- Companies which have issued debentures are required to create a DRR account out of profits of the company available for payment of dividend and the amount credited to such account is to be utilized only for the redemption of debentures

Prospectus and allotment of securities

- Public company permitted to issue securities through following modes, subject to compliances with the Rules and SEBI Act and rules and regulations made thereunder:
 - public offer; or
 - private placement; or
 - issue of rights issue or bonus issue or further issue
- Specific provisions have been inserted in 2013 Act for private placement of securities by public and private companies
- Allotment in respect of private placement of securities must be completed within 60 days from the date of receipt of application money
- A person who has been convicted for personation for acquisition etc. of securities shall also be liable for suffering disgorgement of gains, seizure and disposal of such securities and such amount received

through disgorgement or disposal of securities shall be transferred to IEPF.

Acceptance of deposits

- Companies prohibited from inviting, accepting or renewing deposits from public except following:
 - Banking company;
 - NBFC;
 - such other company as CG may specify; and
 - Public companies having such net worth or turnover and subject to prescribed Rules.
- A company may accept deposit from its members by passing a resolution in general meeting and subject to conditions as may be prescribed in the Rules including the following:
 - Credit rating;
 - Deposit insurance;
 - Depositing in scheduled bank 15% of amount of its deposits maturing during the current and next FY, etc.
- Public companies having such net worth or turnover as may be prescribed will be eligible to accept deposits from persons other than its members subject to conditions including:
 - Credit rating;
 - Creation of charge on the assets of the company

- Any deposit accepted before the commencement of 2013 Act or any interest due thereon to be repaid within 1 year from the commencement of 2013 Act or from the date on which such payments are due, whichever is earlier.
- No dividend on equity shares can be declared during the period of non-compliance, if the Company fails to comply with provisions of acceptance and repayment of deposits

Dividend

- Mandatory transfer of profits to reserves before declaration of dividend done away with. Companies may voluntarily transfer a portion of its profits to reserves
- Interim dividend may be declared only out of surplus in Profit & Loss Account and out of profits of the FY in which dividend is sought to be declared. In case a company has incurred losses up to the preceding quarter of the current FY then interim dividend shall not be declared at a rate higher than the average dividend declared by the company during the immediately preceding 3 FYs.
- Dividend to be distributed within 30 days of its declaration in cash only. Dividend cannot be distributed in kind.
- Where unpaid / unclaimed dividend has been transferred to IEPF, the corresponding shares on which such dividend was unpaid / unclaimed shall also be transferred by the company to IEPF.

Accounts of companies & Director's report

- FY of a company to end on the 31st day of March every year.
- A company or body corporate, which is a holding company or a subsidiary of a company incorporated outside India and is required to follow a different FY for consolidation of its accounts outside India, the NCLT may allow any period as its FY, whether or not that period is a year.
- A company can re-open its books of accounts or re-cast its financial statements on the ground that the relevant earlier accounts were prepared in a fraudulent manner or the affairs of the company were mismanaged during the relevant period casting a doubt on the reliability of the financial statements. Such re-opening or re-casting of its financial statements is permissible if an application is made by CG, IT authorities, SEBI or any other

statutory regulatory body or authority or any person concerned and an order is made by a Court or NCLT.

- BOD may prepare revised financial statement or a revised board report in respect of any of the 3 preceding FYs after obtaining approval of NCLT, if it believes that the financial statements or the BOD report do not comply with the relevant provisions.
- Consolidation of financial statements is made mandatory for all companies where a company has one or more subsidiaries whether Indian or foreign. For the purposes of consolidation of financial statements, the expression "subsidiary" includes "associate company" and "joint venture"
 - 'Associate company', in relation to another company, means a company in which that other company has a significant influence, but which is not a subsidiary company of the company having such influence and includes a joint venture company.
 - 'Significant influence' means control of at least twenty per cent of total share capital, or of business decisions under an agreement.
 - 'Control', shall include the right to appoint majority of the directors or to control the management or policy decisions exercisable by a person or persons acting individually or in concert, directly or indirectly, including by virtue of their shareholding or management rights or shareholders agreements or voting agreements or in any other manner
- NFRA to be constituted by CG – to be headquartered at New Delhi – to provide for matters relating to accounting and auditing policies and standards applicable to companies or their auditors.
- The functions of NFRA shall include:
 - Make recommendations to CG on the formulation of accounting and auditing policies and standards;
 - Monitor and enforce compliance with accounting and auditing standards;
 - Oversee the quality of service of the professions and suggest measures required for improvement in quality of services and such other related matters as may be prescribed;
 - Perform other prescribed functions in relation to above as may be prescribed.
- NFRA to consist of Chairperson and other part time and the full time members not exceeding 15.
- The Chairperson and full time members of NFRA

shall not be associated with any audit firm (including related consultancy firms) during the course of their appointment and 2 years thereafter.

- Powers of NFRA shall include:
 - Investigate into the matters of professional or other misconduct committed by member or firm of CA.
 - Powers as are vested in a civil court under the Code of Civil Procedure, 1908 while trying a suit.
 - Where professional or other misconduct is proved, NFRA have the power to make order for imposing monetary penalty or debarring the member or the firm from engaging himself or itself from practice as member of the institute for a minimum period of 6 months or for such higher period not exceeding 10 years.
- Any person aggrieved by the order of NFRA can prefer appeal to NFRAA.
- CG may direct keeping books of accounts of a company to be maintained for a period more than 8 years where any investigation has been ordered.
- Director's Report to include amongst others, extract of the Annual Return, development and implementation of a risk management policy and CSR, related party contracts, certain loan / guarantees / investments and in case of listed and prescribed public companies – annual evaluation of the performance of the BOD.
- the Directors' Responsibility Statement to include the statement that the directors had devised proper systems to ensure compliance with the provisions of all applicable laws and that such systems were adequate and operating effectively.

Holding-Subsidiary Company

- A subsidiary company, in relation to any other company (that is to say the holding company), means a company in which:
 - the holding company controls the composition of the Board of Directors i.e. if that other company by exercise of some power exercisable by it at its discretion can appoint or remove all or a majority of the directors; or
 - the holding company exercise or control more than half of the total share capital either at its own or together with one or more of its subsidiary companies.

A company shall be deemed to be a subsidiary company of the holding company even if the control referred above is of another subsidiary company of the holding company.

- The concept of holding-subsubsidiary company relationship, as far as it relates to exercise or control of more than half share capital is concerned, requires one to consider the investor company's shareholding in the total paid up share capital (i.e. equity and preference) of the investee company for which the relationship is to be examined. Under the 1956 Act, the investor company's shareholding in the total equity paid up share capital needed to be considered.
- Class or classes of holding companies to be prescribed cannot have layers of subsidiaries beyond such numbers as may be prescribed

Corporate Social Responsibility

- Provisions applicable to every company having:
 - net worth of ` 5 billion or more; or
 - turnover of ` 10 billion or more; or
 - net profit of ` 50 million or more during any FY.
- BOD of such companies is mandated to spend, in every FY, minimum 2% of the average net profits of the company made during the 3 immediately preceding FYs, in pursuance of its the CSR Policy.
- Such companies to constitute CSR committee of its BOD consisting of minimum 3 directors including 1 ID.
- CSR committee shall formulate and recommend to the BOD, CSR Policy on the lines specified.
- BOD of such companies shall mandatorily spend, in every FY, minimum 2% of the average net profits of the company made during the 3 immediately preceding FYs, in pursuance of its CSR Policy. If the company fails to spend such amount, BOD shall specify the reasons for not spending the amount in the BOD report.
- The company is required to give preference to local area and areas where it operates for spending the amount earmarked for CSR.
- If the company fails to spend such amount, BOD is required to specify the reasons for not spending the amount in the Director's report.

Audit and auditors

Appointment of Auditor in unlisted companies

Appointment	Period of appointment
At first AGM	to hold office till conclusion of 6th AGM subject to ratification by members at every AGM
Subsequent	to hold office till conclusion of 6th meeting, subject to ratification by members at every AGM

Procedure and manner of selection of auditor to be prescribed by Rules.

Appointment of Auditor in listed and specified class of companies

Appointment	Maximum period of appointment
Of an individual as an auditor	1 term of 5 consecutive years
Of an audit firm as an auditor	2 terms of 5 consecutive years
Cooling off period of	5 years before next appointment

Common conditions for appointment of auditor in listed and specified class of companies:

- Incoming audit firm should not have any common partners who were the partners of the outgoing audit firm i.e. the audit firm whose tenure expired in the immediately preceding FY by virtue of mandatory rotation requirement.
- Rules to be prescribed to state the manner in which the companies shall rotate their auditors
- Transition period of 3 years provided to the companies to comply with the mandatory rotation of auditor requirement.

Provisions relating to auditors applicable to all companies

- The company may resolve:
 - If Audit firm is appointed, the audit partner and his team shall rotate at such intervals as may be resolved by members.
 - Audit shall be conducted by more than 1 auditor (i.e. joint auditor).
- Qualification of firm as auditors:
 - Majority of partners practicing in India are qualified for appointment;
 - If LLP is appointed as auditor, only partners who are CA shall be authorized to sign.

- Additional grounds for disqualifications for appointment as auditor provided.
- Auditor cannot provide following services "directly or indirectly" to the company or its holding company or subsidiary company, namely:—
 - accounting and book keeping services;
 - internal audit;
 - design and implementation of any financial information system;
 - actuarial services;
 - investment advisory services;
 - investment banking services;
 - rendering of outsourced financial services;
 - management services; and
 - services prescribed under the Rules.

An auditor or audit firm who or which has been performing any non-audit services on or before the commencement of 2013 Act shall comply with the above before the closure of the 1st FY after the date of such commencement.

"Directly or Indirectly" shall include rendering of services by the auditor,—

- Where auditor is an individual - Either himself or through his relative or any other person connected or associated with such individual or through any other entity, whatsoever, in which

- such individual has significant influence or control, or whose name or trade mark or brand is used by such individual
- Where auditor is a firm – Either itself or through any of its partners or through its parent, subsidiary or associate entity or through any other entity, whatsoever, in which the firm or any partner of the firm has significant influence or control, or whose name or trade mark or brand is used by the firm or any of its partners.
- Limits on number of audits to be prescribed through the Rules.
- Classes of companies to be prescribed to appoint an internal auditor who shall be CA or cost accountant or such other professional as may be decided by the BOD.
- Listed company to file with ROC a report in respect of change in number of shares held by promoters or top 10 shareholders within 15 days of the said change.
- CG may declare by notification such items of business which must be transacted by means of postal ballot. All items other than ordinary business and any business, in respect of which directors or auditors have a right to be heard at any meeting, may be transacted by means of postal ballot. The manner of postal ballot will be as prescribed.
- Quorum for general meeting - Presence of members in person only will be counted.
 - Quorum for a private company shall be 2 members personally present.
 - Quorum for a public company shall be as under:

Functions of company secretary and secretarial audit

- CS being a whole-time KMP is to be appointed by a resolution of the BOD which will also contain the terms and conditions of appointment including the remuneration. The functions of CS shall include —
 - report to BOD about compliance with the provisions of 2013 Act, the rules made thereunder and other laws applicable to the company;
 - ensure compliance with the applicable secretarial standards as may be approved by CG; and
 - discharge such other prescribed duties.
- Secretarial audit by CS in practice made compulsory for listed and prescribed class of companies.

Management and administration

- AGM shall be called during the business hours i.e. between 9.00 AM and 6.00 PM on any day other than a National Holiday.
- A member may exercise his vote at a meeting by electronic means as prescribed.
- Notice of general meeting can be given by electronic mode as prescribed. For calling a general meeting at a shorter notice, consent of at least 95% of the members entitled to vote is required for both AGM and EGM
- Explanatory statement to be annexed to the notice of general meeting to also provide such other information and facts that may enable members to understand the meaning, scope and implications of the items of business and to take decision thereon.
- Conditions for demanding a Poll at a general meeting on any resolution made uniform for all companies having share capital.

Total number of members in a public company as on the date of meeting	Quorum (Members personally present)
Upto 1,000 members	5
Between 1,000 to 5,000 members	15
More than 5,000 members	30

- Every company shall observe Secretarial Standards with respect to General and Board Meetings specified by ICSI and approved by the CG. Duty is cast on the CS to ensure that the company complies with the applicable Secretarial Standards.
- Annual Return to contain details as on close of the FY (currently it is as on the date of AGM).
- Annual Return to contain additional information relating to remuneration of directors and KMP, details of meetings of members, BOD and its various committee, etc.

Appointment and qualifications of directors

- Limits on maximum number of directors in a company increased to 15. It can be further increased by passing a special resolution.
- Prescribed class of companies to have at least 1 woman director. Existing companies to comply with this requirement within 1 year.
- One of the directors in a company shall be a person who has stayed in India for 182 days or more in the previous calendar year. Existing companies to comply with this requirement within 1 year or notification of

rules by CG in this regards

- Duties of directors have been defined.
- Director to vacate office if he remains absent from all the meetings of the BOD held during 12 months whether with or without seeking leave of absence of the BOD.

IDs

- Listed companies to have at least 1/3rd of its total number of directors as IDs (as defined – further, the Rules may prescribe additional qualifications to be an ID). CG may prescribe minimum number of IDs in case of any class of public companies. This requirement is to be complied within 1 year:
 - By existing listed companies from the commencement of 2013 Act; and
 - By the prescribed class of public companies from the date Rules are notified.
- Alternate director of an ID can be appointed if such an alternate director is also an ID.
- ID is not liable to retire by rotation and is not to be included in the 'total number of directors' liable to retire by rotation.
- ID shall be appointed for a term upto 5 consecutive years and are eligible for re-appointment subject to compliance with conditions including performance evaluation by the entire BOD and approval by members through special resolution.
- Once the 2 consecutive terms are completed, the ID shall be eligible for appointment after a cooling period of 3 years, provided he is not associated with the company during this 3 years period in any capacity, either directly or indirectly.
- An ID may be selected from data bank maintained by notified institute or association having expertise in creation and maintenance of such data bank.
- IDs not entitled to any stock option but may receive remuneration by way of sitting fee, re-imbursment of expenses for participation in meetings, profit related commission as approved by the members of the company.
- ID and NED (not being promoter or KMP), shall be held liable, only for such acts by a company which had occurred with his knowledge, attributable through Board processes, and with his consent or connivance or where he had not acted diligently.
- Detailed code of conduct to be followed by companies and their IDs have been included in the 2013 Act.

Director elected by small shareholders

- A listed company may have 1 director elected by a small shareholders i.e. shareholders holding shares of nominal value of not more than ` 20,000 or such other sum as may be prescribed.
- Manner, terms and conditions of appointment of such director will be prescribed.

Additional grounds for disqualification of director

- A person who has been convicted of offence dealing with related party transactions at any time during the preceding 5 years.
- Directorship in private companies too under ambit of disqualification on ground of non-filing of financial statements or annual return for any continuous 3 years or failure to repay deposits accepted by it or redeem debentures on due date or pay interest due thereon or pay any dividend declared and such failure continues for 1 year or more.

Maximum number of directorship

- A person cannot be a director, including alternate director, in more than 20 companies including not more than 10 public companies.
 - For determination of public companies for this purpose, directorship in private companies that are either holding or subsidiary company of a public company shall be regarded as a public company.
- Shareholders may specify lesser number of companies in which a director of the company may act as director.
- Transition period to comply with the limit on directorship - 1 year from the commencement of 2013 Act.

Resignation of directors

- Resignation of director to take effect from the date on which notice of resignation is received by the company, or the date, if any, specified by director in the notice, whichever is later.
- Resigning director to also file his resignation letter with the ROC within 30 days, in prescribed manner, giving detailed reasons for resignation.
- Where all directors of a company resigns or vacate office, the promoter or in his absence, the CG to appoint the required number of directors till new directors are appointed in a general meeting.



Meetings of BOD

- First meeting of the BOD of a company must be held within 30 days of its incorporation. Minimum 4 meetings of BOD to be held every year with the gap between the 2 consecutive meetings not exceeding 120 days. CG may by notification provide different requirement or modify the requirement for specific class or description of companies.
- Participation in the board meeting through prescribed video conferencing (VC) or other audio visual means recognized. CG may provide a list of businesses where meeting by means of VC will not be recognized.
- At least 7 days' notice for board meeting shall be given. A board meeting may be called at a shorter notice to transact urgent business, if at least 1 ID is present at such meeting. Decision taken at such meeting in absence of an ID is final only on ratification thereof by at least 1 ID.

Committees of BOD

Audit committee

- Mandatory for listed companies and other prescribed classes of companies.
- Composition – Minimum 3 directors with majority comprising of IDs.
- Chairperson and majority of directors shall be persons with ability to read and understand the financial statement.
- Transitional period for compliance – 1 year from the commencement of 2013 Act.

- Listed companies and prescribed companies to have vigil mechanism for directors and employees to report genuine concern in prescribed manner.

Nomination and Remuneration committee

- Mandatory in case of listed companies and other prescribed classes of companies.
- Composition – 3 or more NED of which at least ½ shall be IDs. The Chairperson of the company can be a member of the committee but cannot be a chairperson of the committee.
- This committee shall amongst other:
 - Identify persons who are qualified to be directors and who can be appointed in senior management;
 - Recommend to BOD, policy relating to remuneration to directors, KMP and other employees keeping in mind appropriate performance bench mark; striking a balance between fixed and incentive pay etc.;
 - be responsible for evaluation of every director of BOD.

Stakeholders Relationship Committee

- SRC mandatory where total number of shareholders, deposit holders, debenture holders and other security holder exceeds 1,000 at any time during a FY.
- Composition – Chairperson shall be NED and such other number of directors as determined by the BOD.
- This committee to consider and resolve grievances of the security holders of the company.

Corporate Social Responsibility committee (CSRC)

- Mandatory where a company is required to contribute to CSR if it meets with paid-up capital, turnover or networth criteria.
- Composition – Minimum 3 directors of which at least 1 shall be ID.
- This committee shall amongst other:
 - To formulate and recommend to BOD, a CSR policy for undertaking permissible activities
 - To recommend the amount of expenditure to be incurred on CSR activities
 - To monitor the CSR Policy

Restrictions on powers of BOD

- Restriction on power of BOD to exercise specified powers with general meeting approval extended to private companies. In all cases approval of shareholders by a special resolution made necessary.
- In case of sale, lease or otherwise disposal of one or more undertaking or the whole or substantially the whole of undertaking, quantitative tests provided for determination of 'undertaking' and 'substantially the whole of the undertaking'.

Loan to Directors

- The 2013 Act provides that a company cannot, directly or indirectly,
 - advance any loan, including any loan represented by a book debt to any director or any other person in whom the director is interested (as specified); or
 - give any guarantee or provide any security in connection with any loan taken by its director or such other person
- The above provision is not applicable to:
 - Loan to MD / WTD as a part of contract of services extended to all its employees or pursuant to scheme approved by members by special resolution
 - A company which in the ordinary course of its business provides loan, guarantee or security for due repayment of any loan and charges interest thereon being not less than bank rate declared by RBI.
- Provisions made applicable to private companies.

Restriction on multilayer investment subsidiaries

- A company unless otherwise prescribed can make investment through not more than 2 layers of investment companies. Exception to this rule is:

- acquisition of a foreign company which has investment subsidiary beyond 2 layers as per the applicable foreign law; and
- a subsidiary company making investment to comply with any applicable law. "Investment Company" has been defined to mean a company whose principal business is the acquisition of shares, debentures or other securities.

Inter-corporate loan, guarantee, security and investment

- 2013 Act covers within its ambit giving loans, guarantee and security not only to a body corporate but also to any other person.
- The rate of interest on the loan granted shall not be lower than the prevailing yield of 1 year, 3 year, 5 year or 10 year Government Security closest to the tenure of the loan.
- Exemption provided for
 - Loan, guarantee or security made by:
 - banking company or insurance company or housing finance company in-ordinary course of their business;
 - company engaged in the business of financing of companies or of providing infrastructural facilities.
 - Investment and lending by NBFC whose principal business is acquisition of securities.
 - Acquisition by companies having principal business of acquisition of securities.
 - Acquisition of shares pursuant to a 'rights issue'
- Classes of companies to be prescribed and companies registered with SEBI cannot take inter-corporate loan or deposit exceeding the limit to be prescribed under the Rules

Related party transactions

- Requirement of obtaining CG approval done away with.
- Related party transactions amongst others to include:
 - Buying, selling etc. property of any kind;
 - Leasing of any kind of property;
 - Related party's appointment to any office or place of profit in the company, its subsidiary company or associate company.
- Related party transactions by a company having paid-up capital or exceeding value of transaction, to be prescribed, will require prior approval of members by special resolution if such transaction (i) is not in the ordinary course of business or (ii) is in

- the ordinary course of business but not on an arm's length basis. Related party who is a member of such a company cannot vote on such a special resolution.
- Arm's length transaction means a transaction between two related parties that is conducted as if they were unrelated, so that there is no conflict of interest.
 - The provisions would not apply to transactions entered into in the ordinary course of business, unless they are not on an arms' length basis.
 - Related party transactions to be disclosed in Director's report along with the justification for entering in to such transactions

Appointment and remuneration of Key Managerial Personnel

- In relation to a company, KMP means -
 - CEO or MD or Manager;
 - Company Secretary;
 - WTD;
 - CFO; and
 - such other officer as may be prescribed
- Prescribed class of companies to have whole-time KMP.
 - A Chairperson can be an MD or CEO at the same time, if the Articles of the company permits or if the company does not have multiple businesses or where the company has multiple businesses and has appointed 1 or more CEOs for each such business as may notified by CG, .
 - A whole-time KMP shall not hold office in more than 1 company at the same time.
 - CFO made responsible and liable for penalty and / or prosecution for compliance with various provisions such as – maintenance of books of accounts, preparation & filing of annual accounts, disclosure of financial information in offer document, risk management, internal control etc.,
- In case of companies with no profits or inadequate profits, managerial remuneration can be paid as per Schedule of remuneration (Schedule V – similar to existing Schedule XIII to 1956 Act). If the conditions of such Schedule are not complied with, payment of managerial remuneration will require approval of CG.
- Insurance premium paid by company for indemnifying specified KMPs against the liabilities for negligence, breach of duty etc. of such specified KMPs shall not be treated as part of remuneration of such KMPs.
- MD or WTD of the company who is in receipt of

any commission from the company shall not be disqualified from receiving any remuneration / commission from its holding company or subsidiary company subject to necessary disclosures in the BOD report.

- Prior approval of shareholders required in general meeting for a company to enter into an arrangement by which -
 - a director of the company or its holding, subsidiary or associate company or a person connected with him acquires or is to acquire assets for consideration other than cash, from the company; or
 - the company acquires or is to acquire assets for consideration other than cash, from such director or person so connected.
- Director or KMP of a company shall not buy in the company, its holding, subsidiary or associate company -
 - a right to call for delivery or a right to make delivery at a specified price and within a specified time, of a specified number of relevant shares or a specified amount of relevant debentures; or
 - a right, as he may elect, to call for delivery or to make delivery at a specified price and within a specified time, of a specified number of relevant shares or a specified amount of relevant debentures.

Compromises, arrangements and amalgamations

- Fast track provisions made to facilitate merger between 2 or more small companies or between holding company and its WOS or such other class of companies as may be prescribed. Fast track merger would require approval of ROC, OL, members holding at least 90% of total no. of shares and majority of creditors representing 9/10th in value.
- Foreign company can be merged with Indian company or vice versa with prior approval of RBI and the consideration can be paid in the form of cash and / or depository receipts. This would apply to foreign companies in jurisdictions as notified by CG.
- Acquirer and / or PAC or person or group of persons who holds 90% or more of the issued equity capital of the company by virtue of amalgamation, share exchange, conversion of securities or for any other reasons, can notify the company of his intention to purchase the remaining equity shares of the company from minority shareholders. In such cases the valuation shall be done by RV. The minority



shareholders of the company may also offer to sell their equity shares to the majority shareholders at a price determined in accordance with the prescribed Rules.

- Compromise or arrangement would require approval by a majority representing 3/4th in value of the creditors and members. Creditors meeting may be dispensed with if at least 90% in value thereof, agree and confirm, by way of an affidavit, to the scheme of compromise or arrangement.
- Accounting treatment in the scheme of compromise and arrangement need to be compliant with the accounting standards and auditor's certificate to that effect needs to be filed with NCLT.
- Valuation report to be given to shareholders / creditors along with notice convening meeting for a compromise or arrangement.
- Notice of compromise or arrangement to be given to CG, Income tax, RBI, SEBI, Stock exchanges, ROC, OL, CCI, if necessary, and other sectoral regulators / authorities, to enable them to make representations.
- Resolution for compromise or arrangement can also be passed through Postal ballot.
- Meeting of creditors can be dispensed only if 90% of the creditors in value agree to the scheme by way of affidavit.
- Holding of shares in its own name or in the name of trust whether through subsidiary or associate companies by the transferee company as a result of the compromise or arrangement, not allowed and any such shares shall be cancelled / extinguished.
- Objection to the compromise or arrangement can be made only by persons holding not less than 10% of the shareholding or having outstanding debt of not

less than 5% of total outstanding debt as per the latest audited balance sheet.

- A scheme of compromise and arrangement may include "takeover offer" in a prescribed manner. In case of listed companies such takeover offer shall be as per the guidelines issued by SEBI.
- No compromise or arrangement shall include buy-back of securities unless it is in accordance for buy-back provisions.
- In case of compromise / arrangement between a listed transferor company and an unlisted transferee company, NCLT may provide that the transferee company shall remain unlisted company until it becomes listed and those shareholders of the transferor company who opts to exit be given an exit at a price which should not be less than the price under SEBI Regulations.
- The scheme of compromise or arrangement 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 at a date subsequent to the appointed date

Revival and rehabilitation of sick companies

- Provisions of revival and rehabilitation of sick companies to apply to all companies and not only to "industrial company" as defined under SICA.
- The criterion of erosion of 50% of net-worth for filing application with BIFR has been done away with. Test for determining stress necessitating regulatory intervention is made uniform i.e. inability of a company to pay debts. Accordingly,
- If a company fails to pay debts due to its secured creditor representing 50% or more of outstanding



amount of debt within 30 days of demand, any secured creditor may file an application to NCLT to declare such company as a “sick company”

- The company may also file an application to NCLT to declare it as a sick company on above ground
- RIF shall be formed for the purposes of rehabilitation, revival and liquidation of sick companies. A company that has contributed any amount to RIF can utilize the funds contributed by it for making payment to workmen, protecting assets and meeting incidental costs during sickness / winding-up proceedings.

Registered Valuers

- Where any valuation is required to be made in respect of any property, stocks, shares, debentures, securities, goodwill or other assets or of net-worth or liabilities under 201 Act, such valuation shall be done by a person registered as a valuer.
- Registered valuer shall be appointed by the audit committee or in its absence by the BOD.

Prevention of oppression and mismanagement

- Class action suits enabled - One or more members or class thereof or one or more creditors / class thereof can apply to NCLT for orders to prevent the affairs of the company being conducted in a manner prejudicial to interests of the company. They may also claim damages / compensation for fraudulent / unlawful / wrongful acts from or against the company / directors / auditors / experts / advisors etc.
- To prevent possible misuse, Class action applications can be made by prescribed number of members / creditors. Banking companies to be out of the purview of Class action.

Dormant company

- A company not having any significant accounting transaction, and which is formed under the 2013 Act for a future project or to hold an asset or an intellectual property or an inactive company may obtain status of a dormant company by applying to the ROC.
- A company which has not filed financial statements or annual returns for 2 FYs consecutively will be classified as Dormant Company by the ROC.
- A company which not been carrying on any business or operation, or has not made any significant accounting transaction during the last 2 FYs, or has not filed financial statements and annual returns during the last 2 FYs is classified as Inactive Company.
- A dormant company will have such number of directors, file such documents and pay such annual fees as may be prescribed.

Removal of names of companies from the register of companies

- A company may be struck off by ROC for following reasons -
 - subscribers to MOA have not paid the subscription money within 180 days from the date of incorporation;
 - company has failed to commence its business within 1 year of its incorporation;
 - company is not carrying on any business or operation for 2 immediately preceding FY and has within such period applied for status of a dormant company.
- Companies can also by passing a special resolution apply for removal of name.

Winding up of a company

- Certain criteria for winding-up by NCLT deleted like minimum number of members falling below prescribed limit, non-commencement of business for 1 year etc.
- Additional grounds provided for winding-up. Winding up can be ordered if NCLT is of the opinion that:
 - affairs of the company have been conducted in a fraudulent manner;
 - company was formed for fraudulent and unlawful purpose;
 - the persons concerned in the formation or management of its affairs have been guilty of fraud, misfeasance or misconduct in connection therewith.

Inspection, inquiry and investigation

- KMP, auditors and practicing CS also subject to search and seizure of documents by ROC and the Inspector appointed by CG.
- CG to establish SFIO for investigation of frauds relating to a company. Till the time SFIO is not established, SFIO already set up by CG in terms of directions of GOI to be used.
- CG may under the specified situations including in public interest refer affairs of a company to be investigated by SFIO.
- Where pursuant to an investigation or a complaint, NCLT is of the opinion that there is good reason to find relevant facts about any securities and such facts cannot be found out unless certain restrictions are imposed, NCLT may provide restrictions on securities for a period not exceeding 3 years.
- Where it appears to NCLT in specified circumstances that there are reasonable grounds to believe that the removal, transfer or disposal of funds, assets, properties of the company is likely to take place in a manner that is prejudicial to the interests of the company or its shareholders or creditors or in public interest, NCLT may direct such transfer, assets, properties, etc. of the company shall not take place during a period not exceeding 3 years.
- Notwithstanding anything contained in the Code of Criminal Procedure, 1973,
 - Special Court may try in a summary way any offence under 2013 Act which is punishable with imprisonment for a term not exceeding 3 years.
 - every offence under 2013 Act except certain offences shall be deemed to be non-cognizable

within the meaning of the said Code. Offences under 2013 Act which are cognizable within the meaning of the said Code include:

- Providing misleading or false information on incorporation;
- Misstatement in prospectus;
- Fraudulently inducing person to invest money;
- Personation for acquisition of securities;
- Concealment of name of creditor entitled to object reduction in capital;
- Destruction of documents,

National Company Law Tribunal and Appellate Tribunal

- Tribunal to be known as NCLT will be constituted which will consist of Judicial and Technical members, as CG may deem necessary, to exercise and discharge the powers and functions conferred on NCLT by or under 2013 Act or any other law for the time being in force.
- Principal bench of NCLT shall be at New Delhi and there may be such other benches as may be specified by CG.
- NCLT to endeavor to dispose of the proceedings within 3 months from the date of commencement of the proceeding.
- On the date of the constitution of NCLT
 - All matters, proceedings or cases pending before CLB shall stand transferred to NCLT;
 - All proceedings under 1956 Act, including proceedings relating to arbitration, compromise, arrangements and reconstruction and winding up of companies, pending before any District Court or High Court, shall stand transferred to NCLT and NCLT may proceed to deal with such proceedings either de novo or from the stage before their transfer.
- Appeals against the order of NCLT shall lie to NCLAT.
- An appeal arising out of order of NCLAT on any question of law shall lie to Supreme Court.
- A party to any proceeding or appeal before NCLT or NCLAT, may either appear in person or authorise one or more CA or CS or CWA or legal practitioners or any other person to present his case.

Special courts

- CG may, for the purpose of providing speedy trial of offences, by notification, establish Special Courts.
- When trying an offence under 2013 Act, a Special Court may also try an offence other than an offence

under 2013 Act with which the accused may, under the Code of Criminal Procedure, 1973 be charged at the same trial.

Protection of minority shareholders interest

Some of the measures include the following:

- The promoter and shareholders having control of a company which has unutilized money raised from public through prospectus and which proposes to change its objects are required to provide an exit to the dissenting shareholders in accordance with regulations to be specified by SEBI.
- Where any benefit accrues to promoter, director, manager, KMP, or their relatives, either directly or

indirectly as a result of non-disclosure or insufficient disclosure in the explanatory statement annexed to the notice of general meeting then such persons shall hold such benefit in trust for the company and shall be liable to compensate the company to the extent of the benefit received by him.

Conclusion

The 2013 Act is expected to facilitate business-friendly corporate regulation, improve corporate governance norms, enhance accountability on the part of corporates and auditors, raise levels of transparency and protect interests of investors, particularly small investors.

Glossary

AGM: Annual General Meeting	AOA: Articles of Association
BOD: Board of Directors	CA: Chartered Accountant
CCI: Competition Commission of India	CEO: Chief Executive Officer
CFO: Chief Finance Officer	CG: Central Government
CRA: Credit Rating Agency	CS: Company Secretary
CSR: Corporate Social Responsibility	CWA: Cost Accountant
DRR: Debenture Redemption Reserve	EGM: Extra-Ordinary General Meeting
FY: Financial Year	GOI: Government of India
HUF: Hindu Undivided Family	ID: Independent Director
IEPF: Investor Education and Protection Fund	KMP: Key Managerial Personnel
LLP: Limited Liability Partnership	MCA: Ministry of Corporate Affairs
MD: Managing Director	MOA: Memorandum of Association
NBFC: Non-Banking Finance Companies	NCLT: National Company Law Tribunal
NCLAT: National Company Law Appellate Tribunal	NED: Non-Executive Director
NFRA: National Financial Reporting Authority	OL: Official Liquidator
OPC: One Person Company	PAC: Persons Acting in Concert
RIF: Rehabilitation and Insolvency Fund	RBI: Reserve Bank of India
RSE: Recognised Stock Exchange	ROC: Registrar of Companies
SEBI: Securities and Exchange Board of India	RV: Registered Valuer
SRC: Stakeholders Relationship Committee	SFIO: Serious Fraud Investigation Office
VC: Video Conferencing	WTD: Whole Time Director
WOS: Wholly Owned Subsidiary	

ASSOCHAM

The knowledge architect of corporate India

Evolution of Value Creator

ASSOCHAM initiated its endeavour of value creation for Indian industry in 1920. Having in its fold more than 400 Chambers and Trade Associations, and serving more than 4,00,000 members from all over India. It has witnessed upswings as well as upheavals of Indian Economy, and contributed significantly by playing a catalytic role in shaping up the Trade, Commerce and Industrial environment of the country.

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ASSOCHAM is seen as a forceful, proactive, forward looking institution equipping itself to meet the aspirations of corporate India in the new world of business. ASSOCHAM is working towards creating a conducive environment of India business to compete globally.

ASSOCHAM derives its strength from its Promoter Chambers and other Industry/Regional Chambers/Associations spread all over the country.

Vision

Empower Indian enterprise by inculcating knowledge that will be the catalyst of growth in the barrierless technology driven global market and help them upscale, align and emerge as formidable player in respective business segments.

Mission

As a representative organ of Corporate India, ASSOCHAM articulates the genuine, legitimate needs and interests of its members. Its mission is to impact the policy and legislative environment so as to foster balanced economic, industrial and social development. We believe education, IT, BT, Health, Corporate Social responsibility and environment to be the critical success factors.

Members – Our Strength

ASSOCHAM represents the interests of more than 4,00,000 direct and indirect members across the country. Through its heterogeneous membership, ASSOCHAM combines the entrepreneurial spirit and business acumen of owners with management skills and expertise of professionals to set itself apart as a Chamber with a difference.

Currently, ASSOCHAM has more than 100 National Councils covering the entire gamut of economic

activities in India. It has been especially acknowledged as a significant voice of Indian industry in the field of Corporate Social Responsibility, Environment & Safety, Corporate Governance, Information Technology, Biotechnology, Telecom, Banking & Finance, Company Law, Corporate Finance, Economic and International Affairs, Tourism, Civil Aviation, Infrastructure, Energy & Power, Education, Legal Reforms, Real Estate and Rural Development to mention a few.

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ASSOCHAM has been a significant contributory factor in the emergence of new-age Indian Corporates, characterized by a new mindset and global ambition for dominating the international business. The Chamber has addressed itself to the key areas like India as Investment Destination, Achieving International Competitiveness, Promoting International Trade, Corporate Strategies for Enhancing Stakeholders Value, Government Policies in sustaining India's Development, Infrastructure Development for enhancing India's Competitiveness, Building Indian MNCs, Role of Financial Sector the Catalyst for India's Transformation.

ASSOCHAM derives its strengths from the following Promoter Chambers: Bombay Chamber of Commerce & Industry, Mumbai; Cochin Chambers of Commerce & Industry, Cochin; Indian Merchant's Chamber, Mumbai; The Madras Chamber of Commerce and Industry, Chennai; PHD Chamber of Commerce and Industry, New Delhi and has over 4 Lakh Direct / Indirect members. Together, we can make a significant difference to the burden that our nation carries and bring in a bright, new tomorrow for our nation.

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