Companies Act, 2013

“LEARN, UNLEARN & RELEARN”
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PRELIMINARY
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<td>Provisions of Companies Act, 2013 as notified (98+1+183= 282 Sections)</td>
<td>Corresponding provisions of Companies Act, 1956</td>
<td>Corresponding provisions of Companies Act, 1956 continue to remain in force</td>
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<td>Section 55 except sub-section (3)</td>
<td>80 and 80A (except Proviso to section 80A(1) and section 80A(2))</td>
<td>Proviso to section 80A(1) and section 80A(2)</td>
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## Companies Act, 2013

### Snapshots

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<td>Passed In Lok Sabha On</td>
<td>18th December, 2012</td>
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<td>Passed In Rajya Sabha On</td>
<td>8th August, 2013</td>
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<td>Received President’s Assent on</td>
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<td>98 Sections on 12th September, 2013</td>
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<td>Total Number of Rules Notified</td>
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<td>Rules under 21 Chapters Notified</td>
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The Statement of Objects and Reasons of Companies Act 2013 -

1. E-governance including maintenance and inspection of documents in electronic form.

2. Concept of Corporate Social responsibility being introduced.

3. Enhanced accountability on part of companies covering aspects such as appointment of independent directors, vigil mechanism through whistle blowing, restriction on layers of subsidiaries etc.

4. Enhanced disclosures in Board Report, Annual Return etc.

5. Facilitating raising of capital by Companies.

6. Audit Accountability including aspects such as rotation of auditors, National Financial Reporting Authority with a mandate to ensure monitoring and compliance of accounting and auditing standards, Secretarial Audit for prescribed class of Companies.

7. Facilitating mergers, including cross-border mergers.

8. Protecting of minority shareholders including aspects such as small shareholder director, exit option etc.

9. Investor Protection measures including aspects such as class action suits, stringent norms for acceptance of deposits etc.
New Concepts Introduced

The Companies Act 2013 has introduced new concepts supporting enhanced disclosure, accountability, better board governance, better facilitation of business and so on. It includes the following aspects.

- Associate Company
- One person Company
- Small Company
- Dormant Company
- Independent Director
- Women Director
- Resident Director
- Secretarial Standards
- Secretarial Audit
- Special Courts
- Class Actions
- Registered Valuer
- Rotation of Auditors
- Vigil Mechanism(Whistle Blowing)
- Corporate Social Responsibility
- Cross Border Mergers
- Prohibition of Insider Trading
- Global Depository Receipts

Note – Mrs Neeta Ambani became first Women Director to be appointed on the Board of Reliance Industries Ltd under the provisions of Companies Act, 2013.
PRELIMINARY

Introduction

- The Companies Bill as passed by Lok Sabha on 18th December 2012 (called Companies Bill, 2012) and passed by Rajya Sabha on 8th August 2013 (became Companies Bill 2013). Section 1 came into effect from 30th August 2013 i.e. the date of notification in the official Gazette after it received assent of President of India on August 29, 2013 and became the Companies Act, 2013 (Act 18 of 2013).

- The Companies Act, 2013 is more of a rule-based legislation. It contains 470 sections and a significant part of the legislation will be in the form of rules.

- The Act of 2013 intends to promote self-regulation and is aimed at building a smooth and easy corporate environment along with the new and improved measures of strong investor protection norms.

- Sections of the Act and Rules Notified

- The Ministry of Corporate Affairs notified 98 sections of the Companies Act, 2013 vide its notification dated 12th September, 2013 the effective date of which is 12th September 2013.

- On February 27, 2014, the provisions of Section 135 i.e. Corporate Social Responsibility were notified to come into force w.e.f. April 01, 2014 along with Companies (Corporate Social Responsibility Policy) Rules, 2014 and Schedule VII.

- On March 26 2014, 183 sections of the Companies Act, 2013 and six schedules were notified by the Ministry of Corporate Affairs and came into effect from April 1, 2014.

- 282 Sections of the Companies Act, 2013 have been notified so far.
SECTION 1: SHORT TITLE, EXTENT, COMMENCEMENT AND APPLICATION.

An Act made to consolidate and amend the law relating to the companies may be called as the Companies Act, 2013. It extends to the whole of India and came into existence at once from the date of notification in the Official Gazette i.e., from 30th August, 2013, however, the provisions of the Act shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint and different dates may be appointed for different provisions of this Act and any reference in any provision to the commencement of this Act shall be taken as a reference to the coming into force of that provision.

The provisions of the Act shall apply to-

- Companies incorporated under this Act or under any previous company law
- Insurance companies (except where the provisions of the said Act are inconsistent with the provisions of the Insurance Act, 1938 or the IRDA Act, 1949)
- Banking companies (except where the provisions of the said Act are inconsistent with the provisions of the Banking Regulation Act, 1949)
- Companies engaged in the generation or supply of electricity (except where the provisions of the above Act are inconsistent with the provisions of the Electricity Act, 2003)
- Any other company governed by any special Act for the time being in force.
- Such body corporate which are incorporated by any Act for time being in force, as the Central Government may by notification specify in this behalf.

This section has been made flexible with respect to enforceability of various sections on different dates and makes position clear as to application of this Act.

Point of Comparison in respect to new law

This section 1 of the 2013 Act replaces sections 1, 616, 561 and 563 of the Companies Act, 1956.

New law under 2013 Act also prescribes the applicability of the Act to various companies/Body corporate such as companies incorporated under this Act/previous company law, Insurance, Banking company etc.
Important Definitions

The Companies Act, 2013 introduces around **33 new definitions**. This section of the Companies Act, 2013 corresponds to section 2 of the Companies Act, 1956 and defines the various terms used in the Act.

**2(7) “auditing standards” means the standards of auditing or any addendum thereto for companies or class of companies referred to in sub-section (10) of section 143;**

Auditing standards have been given legal recognition under the Act which requires that every auditor shall comply with the auditing standards notified by Central Government.

**2(12) “book and paper” and “book or paper” include books of account, deeds, vouchers, writings, documents, minutes and registers maintained on paper or in electronic form;**

*Maintenance of documents in electronic form is recognized.*

**2(14) “branch office”, in relation to a company, means any Establishment described as such by the company;**

This definition is simplified. Any establishment which is described as branch office by the company would be termed as branch office.

**2(18) “Chief Executive Officer” means an officer of a company, who has been designated as such by it;**

*This term is newly recognized term. Chief Executive Officer (CEO) is recognized as Key Managerial Personnel of the company. In the prescribed class of companies, either Managing Director or CEO or manager and in their absence a whole time director must be appointed.*

**2(19) “Chief Financial Officer” means a person appointed as the Chief Financial Officer of a company;**

*This term is newly recognized term. Chief Financial Officer (CFO) is recognized as Key Managerial Personnel of the company. There must be an CFO in the prescribed class of companies as per the provisions of section 203.*

**2(23) “Company Liquidator”, in so far as it relates to the winding up of a company, means a person appointed by—**

(a) the Tribunal in case of winding up by the Tribunal; or

(b) the company or creditors in case of voluntary winding up,

as a Company Liquidator from a panel of professionals maintained by the Central Government under sub-section (2) of section 275;
COMPANIES ACT, 2013

Company Liquidator needs to be appointed from panel of professionals maintained by Central Government consisting of the names of Chartered Accountants, advocates, company secretaries, cost accountants and other notified professionals who are having at least ten years’ experience in company matters. (This Clause is not notified)

2(27) “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;

The term control is defined which is intended to bring clarity. It is the right which may be exercisable by individual or in concert, directly or indirectly.

This control may have been gained by any manner would be covered. Hence the controlling party is suitably bound by the provisions under this Act to act or to disclose in the specified manner.

2(31) “deposit” includes any receipt of money by way of deposit or loan or in any other form by a company, but does not include such categories of amount as may be prescribed in consultation with the Reserve Bank of India;

Stringent norms are prescribed for acceptance of deposits. Companies are allowed to accept deposits only from members after complying with certain conditions. Only the big companies fulfilling certain prescribed criteria can invite deposits from public which are also subject to complying with certain conditions including credit rating.

2(36) “document” includes summons, notice, requisition, order, declaration, form and register, whether issued, sent or kept in pursuance of this Act or under any other law for the time being in force or otherwise, maintained on paper or in electronic form;

Maintenance of documents in electronic form is recognized.

2(37) “employees’ stock option” means the option given to the directors, officers or employees of a company or of its holding company or subsidiary company or companies, if any, which gives such directors, officers or employees, the benefit or right to purchase, or to subscribe for, the shares of the company at a future date at a pre-determined price;

Directors, officers or employees of holding or subsidiary company are also eligible for Employee stock options.

2(38) “expert” includes an engineer, a valuer, a chartered accountant, a company secretary, a cost accountant and any other person who has the power or authority to issue a certificate in pursuance of any law for the time being in force;
'Expert' is a newly recognized term. It is an inclusive definition. They are held responsible under various provisions of the Act.

2(40) “financial statement” in relation to a company, includes—

(i) a balance sheet as at the end of the financial year;

(ii) a profit and loss account, or in the case of a company carrying on any activity not for profit, an income and expenditure account for the financial year;

(iii) cash flow statement for the financial year;

(iv) a statement of changes in equity, if applicable; and

(v) any explanatory note annexed to, or forming part of, any document referred to in sub-clause (i) to sub-clause (iv):

Provided that the financial statement, with respect to One Person Company, small company and dormant company, may not include the cash flow statement;

Cash flow statement and changes in equity is recognized under the ‘financial statement’ of the company. The Act introduces a new provision on re-opening/restatement of financial statements subject to compliance of provisions. It also recognizes voluntary restatement on application by the Board of Directors if in their opinion the financial statements/ Board report do not comply with the requirements of the Act. This is also subject to complying with the provisions of Act.

2(41) “financial year”, in relation to any company or body corporate, means the period ending on the 31st day of March every year, and where it has been incorporated on or after the 1st day of January of a year, the period ending on the 31st day of March of the following year, in respect whereof financial statement of the company or body corporate is made up:

Provided that on an application made by 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 financial year for consolidation of its accounts outside India, the Tribunal may, if it is satisfied, allow any period as its financial year, whether or not that period is a year:

Provided further that a company or body corporate, existing on the commencement of this Act, shall, within a period of two years from such commencement, align its financial year as per the provisions of this clause;

The Act requires all companies to adopt a uniform financial year of 1 April to 31 March.

Only holding or subsidiary companies of a company incorporated outside India would be entitled to the exception of having a different accounting year.

However, these companies have to seek specific approval from the Tribunal to avail the exception.
2(42) “foreign company” means any company or body corporate incorporated outside India which—

(a) has a place of business in India whether by itself or through an agent, physically or through electronic mode; and

(b) conducts any business activity in India in any other manner.

As per the rule 2 (1)(h) of Company (Specification of Definition Details) Rules, 2014 for the purposes of clause (42) of section 2 of the Act, the phrase ‘electronic mode’ means carrying out electronically based, whether the main server is installed in India or not, but not limited to -

(i) business to business and business to consumer transactions, data interchange and other digital supply transactions;

(ii) offering to accept deposits or subscriptions in India or from citizens of India;

(iii) financial settlements, web based marketing, advisory and transactional services database services and products, supply chain management;

(iv) online services such as telemarketing, telecommuting, telemedicine, education and information research; and

(v) all related data communication services, whether conducted by e-mail, mobile devices, social media, cloud computing, document management, voice or data transmission or otherwise.

With this, the companies doing business through electronic mode are also termed as foreign company and need to comply with the specified provisions.

2(43) “free reserves” means such reserves which, as per the latest audited balance sheet of a company, are available for distribution as dividend:

Provided that—

(i) any amount representing unrealised gains, notional gains or revaluation of assets, whether shown as a reserve or otherwise, or

(ii) any change in carrying amount of an asset or of a liability recognized in equity, including surplus in profit and loss account on measurement of the asset or the liability at fair value, shall not be treated as free reserves;

2(44) “Global Depository Receipt” means any instrument in the form of a depository receipt, by whatever name called, created by a foreign depository outside India and authorised by a company making an issue of such depository receipts;
2(45) “Government company” means any company in which not less than fifty-one per cent of the paid-up share capital is held by the Central Government, or by any State Government or Governments, or partly by the Central Government and partly by one or more State Governments, and includes a company which is a subsidiary company of such a Government company;

2(47) “independent director” means an independent director referred to in sub-section (5) of section 149;

Independent Director is recognized in the law. He has an important role under the law. As per the definition, he must be the one who is not having any conflict of interest. He should be independent in letter and spirit. Earlier Independent Director was not included in Companies Act, 1956 and was included in Listing Agreement.

2(48) “Indian Depository Receipt” means any instrument in the form of a depository receipt created by a domestic depository in India and authorised by a company incorporated outside India making an issue of such depository receipts;

2(49) “interested director” means a director who is in any way, whether by himself or through any of his relatives or firm, body corporate or other association of individuals in which he or any of his relatives is a partner, director or a member, interested in a contract or arrangement, or proposed contract or arrangement, entered into or to be entered into by or on behalf of a company;

2(51) “key managerial personnel”, in relation to a company, means—

(i) the Chief Executive Officer or the managing director or the manager;

(ii) the company secretary;

(iii) the whole-time director;

(iv) the Chief Financial Officer; and

(v) such other officer as may be prescribed;

The new law enshrines a significant duty on the Key Managerial Personnel (KMP) of the company in successful running of the company. It clearly specifies that whole time KMP not to hold office in more than one company except in its subsidiary at same time. The KMP would guide the Boards to achieve their defined objectives, and purposes by adherence to good Corporate Governance practices. KMP would also be looked upon by the Regulators for the non-compliances.

Key Managerial personnel are also included in ’related parties’ of the company.

2(57) “net worth” means the aggregate value of the paid-up share capital and all reserves created out of the profits and securities premium account, after deducting the aggregate value of the accumulated losses, deferred expenditure and
miscellaneous expenditure not written off, as per the audited balance sheet, but does not include reserves created out of revaluation of assets, write-back of depreciation and amalgamation;

In section 76 i.e. Acceptance of deposits from public by certain companies. The term is used as a criteria for acceptance of deposits from persons other than its members.

In section 135 i.e. ‘Corporate Social Responsibility’, the term is used as a criteria for constituting CSR Committee.

In section 148 (2), i.e. Central Government to specify audit of items of cost in respect of certain companies, net worth is one of the criteria for classifying the company by Central Government to specify audit of items of cost in respect of certain companies.

2(60) “officer who is in default”, for the purpose of any provision in this Act which enacts that an officer of the company who is in default shall be liable to any penalty or punishment by way of imprisonment, fine or otherwise, means any of the following officers of a company, namely:—

(i) whole-time director;

(ii) key managerial personnel;

(iii) where there is no key managerial personnel, such director or directors as specified by the Board in this behalf and who has or have given his or their consent in writing to the Board to such specification, or all the directors, if no director is so specified;

(iv) any person who, under the immediate authority of the Board or any key managerial personnel, is charged with any responsibility including maintenance, filing or distribution of accounts or records, authorises, actively participates in, knowingly permits, or knowingly fails to take active steps to prevent, any default;

(v) any person in accordance with whose advice, directions or instructions the Board of Directors of the company is accustomed to act, other than a person who gives advice to the Board in a professional capacity;

(vi) every director, in respect of a contravention of any of the provisions of this Act, who is aware of such contravention by virtue of the receipt by him of any proceedings of the Board or participation in such proceedings without objecting to the same, or where such contravention had taken place with his consent or connivance;

(vii) in respect of the issue or transfer of any shares of a company, the share transfer agents, registrars and merchant bankers to the issue or transfer;

A close analysis of the section reveals that liability as officer in default is fastened on all the officers specified in clauses (i) to (vii). All the said seven specified categories of officers would be deemed to be officer who is in default irrespective of whether they were party to the default or not. It would
be enough to show that a statutory provision has not been complied with to bring them under this section. However, it applies to those provisions of the Act, which uses the expression ‘officer who is in default’.

The share transfer agents, registrars and merchant bankers to the issue or transfer are also identified as officer in defaults as far as issue of shares or transfer of shares of company is concerned.

2(62) “One Person Company” means a company which has only one person as a member.

As per section 3(1)(c), One person Company is considered as a private company.

In terms of Rule 3 of the Companies (Incorporation) Rules, 2014, only a natural person who is an Indian citizen and resident in India is eligible to incorporate OPC.

Many relaxations have been granted to OPC in compliances and procedural aspects. For example, OPC is not required to hold AGM. Relaxation with regard to holding board meetings, preparation of financial statements (cash flow exempted), signing of annual return etc.

2(65) “postal ballot” means voting by post or through any electronic mode; Electronic mode is recognized.

2(68) “private company” means a company having a minimum paid-up share capital of one lakh rupees or such higher paid-up share capital as may be prescribed, and which by its articles,—

(i) restricts the right to transfer its shares;

(ii) except in case of One Person Company, limits the number of its members to two hundred:

Provided that where two or more persons hold one or more shares in a company jointly, they shall, for the purposes of this clause, be treated as a single member:

Provided further that—

(A) persons who are in the employment of the company; and

(B) persons who, having been formerly in the employment of the company, were members of the company while in that employment and have continued to be members after the employment ceased, shall not be included in the number of members; and

(iii) prohibits any invitation to the public to subscribe for any securities of the company;

Maximum number of members that a private company can have is 200.
Private companies are treated at par with public companies as far as compliances under the Act are concerned. Number of exemptions are less as compared to those given by 1956 Act.

2 (69) “promoter” means a person—

who has been named as such in a prospectus or is identified by the company in the annual return referred to in section 92; or

who has control over the affairs of the company, directly or indirectly whether as a shareholder, director or otherwise; or

in accordance with whose advice, directions or instructions the Board of Directors of the company is accustomed to act:

Provided that nothing in sub-clause (c) shall apply to a person who is acting merely in a professional capacity;

The term is defined to bring clarity. Promoters have been held liable at various provisions of the Act for ex. Incorporation by false documents, alteration of objects for which the company has raised funds, misstatements in prospectus etc.

2(71)“public company” means a company which—

(a) is not a private company;

(b) has a minimum paid-up share capital of five lakh rupees or such higher paid-up capital, as may be prescribed:

Provided that a company which is a subsidiary of a company, not being a private company, shall be deemed to be public company for the purposes of this Act even where such subsidiary company continues to be a private company in its articles;

It is clarified the status of a private company which is a subsidiary of a public company by providing specifically in the proviso that such company shall be deemed to be public company irrespective of its status as private company in its articles.

2(74) “register of companies” means the register of companies maintained by the Registrar on paper or in any electronic mode under this Act;

Maintenance of Register of companies in electronic mode is recognized.

2(75) “Registrar” means a Registrar, an Additional Registrar, a Joint Registrar, a Deputy Registrar or an Assistant Registrar, having the duty of registering companies and discharging various functions under this Act;

2(76)“related party”, with reference to a company, means—

(i) a director or his relative;
(ii) a key managerial personnel or his relative;

(iii) a firm, in which a director, manager or his relative is a partner;

(iv) a private company in which a director or manager is a member or director;

(v) a public company in which a director or manager is a director or holds along with his relatives, more than two per cent. of its paid-up share capital;

(vi) any body corporate whose Board of Directors, managing director or manager is accustomed to act in accordance with the advice, directions or instructions of a director or manager;

(vii) any person on whose advice, directions or instructions a director or manager is accustomed to act:

Provided that nothing in sub-clauses (vi) and (vii) shall apply to the advice, directions or instructions given in a professional capacity;

(viii) any company which is—

(A) a holding, subsidiary or an associate company of such company; or

(B) a subsidiary of a holding company to which it is also a subsidiary;

(ix) such other person as may be prescribed;

As per Company (Specification of Definition Details) Rules, 2014, for the purposes of sub-clause (ix) of clause (76) of section 2 of the Act, a director or key managerial personnel of the holding company or his relative with reference to a company, shall be deemed to be a related party.

2(77) “relative”, with reference to any person, means anyone who is related to another, if—

(i) they are members of a Hindu Undivided Family;

(ii) they are husband and wife; or

(iii) one person is related to the other in such manner as may be prescribed;

As per Company (Specification of Definition Details) Rules, 2014 the List of relatives in terms of clause (77) of section 2is as under:

(1) Father - including Step Father.

(2) Mother - including Step Mother

(3) Son - including Step Son
(4) Son’s wife.

(5) Daughter.

(6) Daughter’s husband.

(7) Brother - - including Step Brother

(8) Sister - including Step Sister

2(79) “Schedule” means a Schedule annexed to this Act;

There are seven schedules which are annexed to the Act.

2(83) “Serious Fraud Investigation Office” means the office referred to in section 211;

Serious Fraud Investigation Office is functional under the supervision of Ministry of Corporate Affairs. It is now recognized under the Companies Act.

2 (85) “small company” means a company, other than a public company,—

(i) paid-up share capital of which does not exceed fifty lakh rupees or such higher amount as may be prescribed which shall not be more than five crore rupees; or

(ii) turnover of which as per its last profit and loss account does not exceed two crore rupees or such higher amount as may be prescribed which shall not be more than twenty crore rupees:

Provided that nothing in this clause shall apply to—

(A) a holding company or a subsidiary company;

(B) a company registered under section 8; or

(C) a company or body corporate governed by any special Act;

New form of company is recognized which is a private company which is subject to certain relaxations in terms of compliances.

Further, a holding company or a subsidiary company, a company registered under section 8, or a company or body corporate governed by any special Act cannot be a small company even if it fulfills the criteria of paid up capital or turnover.

Merger or amalgamation between two or more small companies has been simplified without the requirement of court process.

2(87) “subsidiary company” or “subsidiary”, in relation to any other company (that is to say the holding company), means a company in which the holding company—
(i) controls the composition of the Board of Directors; or

(ii) exercises or controls more than one-half of the total share capital either at its own or together with one or more of its subsidiary companies:

Provided that such class or classes of holding companies as may be prescribed shall not have layers of subsidiaries beyond such numbers as may be prescribed. (This proviso not notified)

Explanation.—For the purposes of this clause,—

(a) a company shall be deemed to be a subsidiary company of the holding company even if the control referred to in sub-clause (i) or sub-clause (ii) is of another subsidiary company of the holding company;

(b) the composition of a company’s Board of Directors shall be deemed to be controlled by another company 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;

(c) the expression “company” includes; anybody corporate

(d) “layer” in relation to a holding company means its subsidiary or subsidiaries;

The definition of a subsidiary under the 2013 is based on ownership of the total share capital which includes preference share capital. As per the Rule 2(1)(r) of Companies (Specification of definitions details) Rules, 2014 the term “Total Share Capital”, for the purposes of clause (6) and clause (87) of section 2, means the aggregate of the:

(a) paid-up equity share capital; and

(b) convertible preference share capital;

This will have a significant impact on several companies which have issued preference shares. Because of this provision, holding-subsidiary relationships would come existence between various companies.

Provision restricting number of layers of subsidiaries is incorporated.
**MCA clarification no. No.1/1212013-cl-v dated December 27, 2013:**

**Subject:** Clarification with regard to holding of shares or exercising power in a fiduciary capacity - Holding and Subsidiary relationship under Section 2(87) of the Companies Act, 2013.

“This Ministry has received a number of representations consequent upon notifying section 2(87) of the Companies Act, 2013 which defines “subsidiary company” or “subsidiary”. The stakeholders have requested this Ministry to clarify whether shares held or power exercisable by a company in a ‘fiduciary capacity’ will be excluded while determining if a particular company is a subsidiary of another company. The stakeholders have further pointed out that in terms of section 4(3) of the Companies Act, 1956, such shares or powers were excluded from the purview of holding-subsidiary relationship.

The matter has been examined in the Ministry and it is hereby clarified that the shares held by a company or power exercisable by it in another company in a ‘fiduciary capacity’ shall not be counted for the purpose of determining the holding-subsidiary relationship in terms of the provision of section 2(87) of the Companies Act, 2013.”

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1. **2(88)** “sweat equity shares” means such equity shares as are issued by a company to its directors or employees at a discount or for consideration, other than cash, for providing their know-how or making available rights in the nature of intellectual property rights or value additions, by whatever name called;

2. **2(89)** “total voting power”, in relation to any matter, means the total number of votes which may be cast in regard to that matter on a poll at a meeting of a company if all the members thereof or their proxies having a right to vote on that matter are present at the meeting and cast their votes;

3. **2(90)** “Tribunal” means the National Company Law Tribunal constituted under section 408;

National Company Law Tribunal is empowered to entertain all the company matters. It would serve single window settlement of case relating to companies thereby reducing the time for completion of proceedings.

4. **2(95)** words and expressions used and not defined in this Act but defined in the Securities Contracts (Regulation) Act, 1956 or the Securities and Exchange Board of India Act, 1992 or the Depositories Act, 1996 shall have the meanings respectively assigned to them in those Acts.
CHAPTER - II

INCORPORATION OF COMPANY AND MATTERS INCIDENTAL THERETO
NOTES
INCORPORATION OF COMPANY AND MATTERS INCIDENTAL THERETO

Introduction

A company comes into existence is generally by a process referred to as incorporation. Once a company has been legally incorporated, it becomes a distinct entity from those who invest their capital and labour to run the company.

Usually the first step to form a company is the process known as ‘promotion’ where a person persuades others to contribute capital to a proposed company before it is incorporated. Such a person is called the promoter of the company. Promoters also can enter into a contract on behalf of a company before or after it has been granted a certificate of incorporation, and arrange share issues in the name of the company.

Section 3 to 22 of the Companies Act, 2013 (herein after called the Act) read with Companies (Incorporation) Rules, 2014 made under Chapter II of the Act (herein after called ‘the Rules’) cover the provisions with regard to incorporation of companies and matters incidental thereto.

FORMATION OF A COMPANY

In terms of Section 3(1), a company may be formed for any lawful purpose by—

a. seven or more persons, where the company to be formed is to be a public company;

b. two or more persons, where the company to be formed is to be a private company; or

c. one person, where the company to be formed is to be One Person Company that is to say, a private company, by subscribing their names or his name to a memorandum and complying with the requirements of this Act in respect of registration.

This is done by subscribing to their names or his name to a memorandum and complying with the requirements of this Act in respect of registration.

(2) A company formed under sub-section (1) may be either—

(a) a company limited by shares; or

(b) a company limited by guarantee; or

(c) an unlimited company.

One Person Company

With the implementation of the Companies Act, 2013, a single person could constitute a Company, under the One Person Company (OPC) concept.
The introduction of OPC in the legal system is a move that would encourage corporatisation of micro businesses and entrepreneurship.

As per section 2(62) of the Companies Act, 2013, “One Person Company” means a company which has only one person as a member.

The memorandum of One Person Company is required to indicate the name of the other person, with his prior written consent in the prescribed form, who shall, in the event of the subscriber’s death or his incapacity to contract become the member of the company and the written consent of such person shall be filed with the Registrar at the time of incorporation of the One Person Company along with its memorandum and articles. Such nomination shall be filed in Form No INC.2 along with consent of such nominee obtained in Form No INC.3 and fee as provided in the Companies (Registration offices and fees) Rules, 2014. The member of One Person Company may at any time change the name of such other person by giving notice, change the name of the person nominated by him at any time for any reason including in case of death or incapacity to contract of nominee and nominate another person after obtaining the prior consent of such another person in Form No INC.3.

Rule 3 of Companies (Incorporation) Rules, 2014 deals with One Person Company.

PROCEDURAL ASPECTS WITH REGARD TO INCORPORATION

1. Application for Availability of Name of company

As per section 4(4) a person may make an application, in such form and manner and accompanied by such fee, as may be prescribed, to the Registrar for the reservation of a name set out in the application as—

(a) the name of the proposed company; or

(b) the name to which the company proposes to change its name.

As per Rule 9 of Companies (incorporation) Rules 2014, an application for the reservation of a name shall be made in Form No. INC.1 along with the fee as provided in the Companies (Registration offices and fees) Rules, 2014.

According to section 4(2), the name stated in the memorandum of association shall not—

(a) be identical with or resemble too nearly to the name of an existing company; or (b) be such that its use by the company (i) will constitute an offence under any law for the time being in force; or (ii) is undesirable in the opinion of the Central Government.

The Registrar may reserve the name for a period of 60 days from the date of the application.

2. Preparation of Memorandum and Articles of Association

A. Memorandum of Association
The Memorandum of Association is the charter of a company. It is a document, which amongst other things, defines the area within which the company can operate.

The first step in the formation of a company is to prepare a document called the memorandum of association. In fact memorandum is one of the most essential pre-requisites for incorporating any form of company under the Act.

As per section 2(56) “memorandum” means the memorandum of association of a company as originally framed or as altered from time to time in pursuance of any previous company law or of this Act.

Section 4 of the Act prescribes the particulars to be mentioned in a memorandum of association and other requirements. It is the constitution document of the company. The company cannot depart from the provisions of the memorandum. If it enters into a contract or engages in any trade or business which is beyond the powers conferred on it by the memorandum, such a contract or the act will be ultra vires (Beyond Powers) the company and hence void.

Section 4(6) of the Companies Act, 2013 provides that the memorandum of association should be in any one of the Forms specified in Tables A, B, C, D or E of Schedule I to the Act, as may be applicable in relation to the type of company proposed to be incorporated or in a Form as near thereto as the circumstances admit.

As per Section 4(1), the memorandum of a limited company must contain the following:

(a) Name Clause; (b) Situation Clause; (c) Objects clause; (d) Liability Clause; (e) Capital Clause; and (f) in the case of a One Person Company, the name of the person who, in the event of the death of the subscriber, shall become the member of the company.

The above clauses are compulsory and are designated as “conditions” prescribed by the Act, on the basis of which a company is incorporated.

a) Name Clause

A company being a legal entity must have a name of its own to establish its separate identity. The name of the company is a symbol of its independent corporate existence. The first clause in the memorandum of association of the company states the name by which a company is to be known. The company may adopt any suitable name provided it is not undesirable.

In case of One Person Company, the words “One Person Company” shall be mentioned in brackets below the name of such company, wherever its name is printed, affixed or engraved.

Ministry of Corporate Affairs (MCA) has clarified that display of its name in English in addition to the display in the local language will be a sufficient compliance with the requirements of the section.
b) Situation Clause

The name of the State in which the registered office of the company is to be situated must be given in the memorandum. But the exact address of the registered office is not required to be stated therein. Within 15 days of its incorporation, and at all times thereafter, the company must have a registered office to which all communications and notices may be sent. The company must also furnish to the Registrar verification of its registered office within a period of thirty days of its incorporation in such manner as may be prescribed.

c) Objects Clause

The third compulsory clause in the memorandum sets out the objects for which the company has been formed. Under section 4(1)(c) of the Companies Act, 2013, all companies must state in their memorandum the objects for which the company is proposed to be incorporated and any matter considered necessary in furtherance thereof.

d) Liability Clause

The fourth compulsory clause must state that liability of the members is limited, if it is intended that the company be limited by shares or by guarantee. The effect of this clause is that, in a company limited by shares, no member can be called upon to pay more than what remains unpaid on the shares held by him.

e) Capital Clause:

This is the fifth compulsory clause which must state the amount of the capital with which the company is registered, unless the company is an unlimited liability company. The shares into which the capital is divided must be of fixed value, which is commonly known as the nominal value of the share. The capital is variously described as “nominal”, “authorised” or “registered”.

Declaration for Subscription

The subscribers to the memorandum declare: “We, the several persons whose names and addresses are subscribed below, are desirous of being formed into a company in pursuance of this memorandum of association, and we respectively agree to take the number of shares in the capital of the company set opposite our respective names”. Then follow the names, addresses, description, occupations of the subscribers, and the number of shares each subscriber has agreed to take and their signatures attested by a witness. (Refer to INC 13 of Companies (Incorporation) Rules 2013)

The statutory requirements regarding subscription of memorandum are that:

— each subscriber must take at least one share;

— each subscriber must write opposite his name the number of shares which he agrees to take. [Section 4(1)(e)]
B. Articles of Association

According to Section 2(5) of the Companies Act, 2013, ‘articles’ means the articles of association of a company as originally framed or as altered from time to time or applied in pursuance of any previous company law or of this Act. The articles of a company shall be in respective forms specified in Tables, F, G, H, I and J in Schedule I as may be applicable to such company.

Entrenchment Provisions

The articles may contain provisions for entrenchment to the effect that specified provisions of the articles may be altered only if conditions or procedures that are more restrictive than those applicable in the case of a special resolution, are met or complied with. [Section 5 (3)]

The Companies Act, 2013 recognizes an interesting concept of entrenchment. Essentially, the entrenchment provisions allow for certain clauses in the articles to be amended upon satisfaction of certain conditions or restrictions (such as obtaining a 100% consent) greater than those prescribed under the Act. This provision acts as a protection to the minority shareholders and is of specific interest to the investment community. This shall empower the enforcement of any pre-agreed rights and provide greater certainty to investors, especially in joint ventures.

3. Filing of documents

Section 7(1) that the following documents and information for registration shall be filed with the Registrar within whose jurisdiction the registered office of a company is proposed to be situated:

Memorandum and Articles of Association of the company duly signed

Section 7(1)(a) states that the memorandum and articles of the company duly signed by all the subscribers to the memorandum in such manner as may be prescribed;

Declaration from the professional

Section 7(1)(b) states that a declaration in the prescribed form by an advocate, a chartered accountant, cost accountant or company secretary in practice, who is engaged in the formation of the company, and by a person named in the articles as a director, manager or secretary of the company, that all the requirements of this Act and the rules made thereunder in respect of registration and matters precedent or incidental thereto have been complied with in Form No INC 8;

Affidavit from the subscribers to the Memorandum

Section 7(1)(c) states that an affidavit from each of the subscribers to the memorandum and from persons named as the first directors, if any, in the articles that he is not convicted of any offence in connection with the promotion, formation or management of any company, or that he has not been found guilty of any fraud or misfeasance or of any breach of duty to any company under this Act or any previous company law during the preceding five years and that all the documents filed with the
Registrar for registration of the company contain information that is correct and complete and true to the best of his knowledge and belief in Form No INC 9;

The address for correspondence till its registered office is established;

Under Section 12, a company shall, on and from the 15th day of its incorporation and at all times thereafter, have a registered office capable of receiving and acknowledging all communications and notices as may be addressed to it. The company can furnish to the registrar verification of registered office within 30 days of incorporation in the manner prescribed. As per rule 25(1) of Companies (Incorporation) Rules 2014, the verification of registered office shall be filed in Form no INC 22.

Particulars of subscribers

Section 7(1)(e) states that the particulars of name, including surname or family name, residential address, nationality and such other particulars of every subscriber to the memorandum along with proof of identity, as may be prescribed, and in the case of a subscriber being a body corporate, such particulars as may be prescribed;

Section 7(1)(f) states that the particulars of the persons mentioned in the articles as the first directors of the company, their names, including surnames or family names, the Director Identification Number, residential address, nationality and such other particulars including proof of identity as may be prescribed. Section 7(1)(g) states that the particulars of the interests of the persons mentioned in the articles as the first directors of the company in other firms or bodies corporate along with their consent to act as directors of the company in such form and manner as may be prescribed in FORM NO DIR 12.

Power of Attorney

With a view to fulfilling the various formalities that are required for incorporation of a company, the promoters may appoint an attorney empowering him to carry out the instructions/requirements stipulated by the Registrar. This requires execution of a Power of Attorney on a non-judicial stamp paper of a value prescribed in the respective State Stamp Laws.

4. Issue of Certificate of Incorporation by Registrar

Section 7(2) states that the Registrar on the basis of documents and information filed under subsection (1) of section 7, shall register all the documents and information referred to in that subsection in the register and issue a certificate of incorporation in the prescribed form to the effect that the proposed company is incorporated under this Act.

Conclusive Evidence

A Certificate of Incorporation given by the Registrar in respect of any association shall be conclusive evidence that all the requirements of the Act have been complied with in respect of registration and matters precedent and incidental thereto, and that the association is a company authorised to be registered and duly registered under the Act.
ALTERATION OF MEMORANDUM OF ASSOCIATION

Section 13(1) of the Companies Act, 2013 provides that save as provided in section 61 (Dealing with power of limited company to alter its share capital), a company may, by a special resolution and after complying with the procedure specified in this section, alter the provisions of its memorandum. The memorandum of association of a company may be altered in the following respects:

(1) By changing its name [Sections 13(2)].

(2) By altering it in regard to the State in which the registered office is to be situated [Section 13(4) & (7)].

(3) By altering its objects [Section 13 (1) & (9).

(4) By altering its share capital (Section 61).

(5) By re-organising its share capital (Sections 230 to 237).

(6) By reducing its capital (Section 66).

The provisions or conditions of the memorandum of association relating to the name clause, registered office clause, the objects clause, limited liability clause, subscriber’s share clause as provided in Section 4 of the Companies Act, 2013 or any other specific provisions contained therein, can be altered by following the prescribed procedure laid down in the Act. Strict compliance of the prescribed procedure is demanded by law. Failure to comply with the express provisions made under the Act for the purpose of alteration of the provisions or conditions contained in the memorandum will be deemed as a nullity.

Further section 13(6) provides that a company shall, in relation to any alteration of its memorandum, file with the Registrar the special resolution passed by the company under section 13(1).

Section 13(10) provides that no alteration made under this section shall have any effect until it has been registered in accordance with the provisions of the said section.

Further, any alteration of the memorandum, in the case of a company limited by guarantee and not having a share capital, purporting to give any person a right to participate in the divisible profits of the company otherwise than as a member, shall be void. [Section 13 (11)]

Registration of Alteration

Section 13(6)(a) provides that a company shall, in relation to any alteration of its memorandum, file with the Registrar:

(a) the special resolution passed by the company under section 13(1); and
(b) the approval of the Central Government under section 13(2), if the alteration involves any change in the name of the company.

The special resolution shall be filed with the Registrar within thirty days of the passing or making thereof in the prescribed manner and payment of prescribed fees within the time specified under section 403.

As per section 13(9), the Registrar shall register any alteration of the memorandum with respect to the objects of the company and certify the registration within a period of thirty days from the date of filing of the special resolution in accordance with section 13 (6)(a).

**Alteration of Articles of Association**

A company has a statutory right to alter its articles of association. But the power to alter is subject to the provisions of the Act and to the conditions contained in the memorandum.

**Subsidiary company not to hold shares in its holding company**

Section 19 provides that no company shall, either by itself or through its nominees, hold any shares in its holding company and no holding company shall allot or transfer its shares to any of its subsidiary companies. Any such allotment or transfer of shares of a company to its subsidiary company shall be void.

However, this will not apply in the following cases:

(a) where the subsidiary company holds such shares as the legal representative of a deceased member of the holding company; or

(b) where the subsidiary company holds such shares as a trustee; or

(c) where the subsidiary company is a shareholder even before it became a subsidiary company of the holding company

It is further provided that the subsidiary company referred to above shall have a right to vote at a meeting of the holding company only in respect of the shares held by it as a legal representative or as a trustee, as referred to in clause (a) or clause (b).

In case of a holding company which is a company limited by guarantee or an unlimited company, not having a share capital, the reference of ‘share’ shall be construed as a reference to the interest of its members, whatever be the form of interest.

**SERVICE OF DOCUMENTS**

Section 20 (1) provides that a document may be served on a company or an officer thereof by sending it to the company or the officer at the registered office of the company by registered post or by speed post or by courier service or by leaving it at its registered office or by means of such electronic or other mode as may be prescribed.
Where securities are held with a depository, the records of the beneficial ownership may be served by such depository on the company by means of electronic or other mode.

A member may request for delivery of any document through a particular mode, for which he shall pay such fees as may be determined by the company in its annual general meeting.

AUTHENTICATION OF DOCUMENTS

Section 21 states that unless otherwise provided, a document or proceeding requiring authentication by a company; or contracts made by or on behalf of a company, may be signed by any key managerial personnel or an officer of the company duly authorized by the Board in this behalf.

Point of comparison with respect to new law-

• Section 54 (Authentication of documents and proceedings) given under 1956 Act has been replaced by the section 21 of the 2013 Act.

• New law given under the 2013 Act, prescribes authentication of contracts made by or on behalf of a company, separately. Earlier in the 1956 Act, contracts made by or on behalf of a company were included in the ambit of ‘authentication of document’.

• The documents may be signed by key managerial personnel under the 2013 Act, which were earlier signed by director, manager and the secretary.
CHAPTER - III

PROSPECTUS

AND

ALLOTMENT OF
SECURITIES
INTRODUCTION

Financial markets have an important relationship with economic development. A company decides to issue securities for different reasons; the main reason being raising capital to meet its financial requirements may be for starting a venture, repaying debts, expansion and diversification. This actually reflects indulgence of enormous investor wealth for the sublime reason of economic development.

In India a company planning to issue securities shall abide by relevant provisions of

(a) Securities Contracts (Regulation) Act, 1956,
(b) Securities Contracts (Regulation) Rules, 1957,
(c) Companies Act, 2013 (hereinafter referred to as the Act) and The Companies (Prospectus and Allotment of Securities) Rules, 2014,
(d) Securities and Exchange Board of India Act, 1992 and the rules and regulations made there under.

As per the Companies Act, 1956, a private company was prohibited from accessing to the public in raising its capital whereas a public company were allowed to access to the public for raising the share capital for the businesses. To overcome this disadvantage to the private company, the Companies Act, 2013 provides the manner in which securities can be issued by both public and private company. This can be done by following the certain formalities like issue of prospectus, compliance of certain requirements in getting minimum subscription, securities allotment etc. Also a company is permitted under the Act, after issuing securities to buy back its own securities. Following notified sections coming in the purview of this unit.

PROSPECTUS- MEANING AND ROLE

The term prospectus can be understood in general as, a document containing statement of the property, business, undertaking for the formation and development of a company for which an appeal is made to the public to subscribe for shares. The term prospectus is however, defined in clause 2(70) of the Companies Act, 2013 which is explained in the definitional part of this supplementary.

Public offer and private placement- Section 23 of the Companies Act, 2013 is related to the issue of securities by the public company and private company. The section prescribes the mode of issue of securities.

According to the section, a public company may issue securities in the following manner –

(a) to public through prospectus (herein referred to as "public offer"), or
(b) through private placement; or

(c) through a rights issue or a bonus issue, and

(d) in case of a listed company or a company which intends to get its securities listed, with the provisions of the Securities and Exchange Board of India Act, 1992 and the rules and regulations made there under.

Here term, "public offer" includes initial public offer (IPO) or further public offer of securities to the public by a company, or an offer for sale of securities to the public by an existing shareholder, through issue of a prospectus.

Whereas a private company may issue securities —

(a) by way of rights issue; or

(b) bonus issue; or

(c) through private placement.

**Point of comparison with respect to new law**-

- This is a new provision which seeks to provide the way in which a public company or a private company may issue securities.

**Section 55 A (Companies Act 1956): Power of SEBI**

Power of Securities and Exchange Board to regulate issue and transfer of securities, etc.**(Section 24)** - This section 24 of the Companies Act, 2013 seeks to provide that issue and transfer of securities etc of the listed companies / companies which intend to get their securities listed, shall be administered by SEBI and the Central Government, as required.

The Ministry of Corporate Affairs issued an order called as, the Companies (Removal of Difficulties) Order, 2013 on 20th September, 2013. By this order Ministry clarified that until a date is notified by the Central Government under section 434(1) of the Companies Act, 2013 for transfer of all matters, proceedings or cases to the Tribunal constituted under Chapter 28 of the Companies Act, 2013, till then, the Board of Company Law Administration shall exercise the powers of the Tribunal under sections 24, 58 and section 59 in pursuance of the second proviso to section 465(1) of the Companies Act, 2013.

**Point of comparison with respect to new law**-

- This section replaces Section 55A (Powers of Securities and Exchange Board of India) of the 1956 Act.

- The provisions of new law contained in 2013 Act, clearly shows that this provision shall also apply to chapter IV of the 2013 Act so far it relates to issue and transfer of securities by listed companies and companies which intend to get their securities listed( i.e. unlisted
companies) on any recognised stock exchange in India, administered by the Securities and Exchange Board.

Requirements as to the issue of Prospectus

Advertisement of prospectus – Section 30 of the Companies Act, 2013 seeks to provide for an advertisement of any prospectus of a company to be published.

Section provides that where an advertisement of any prospectus of a company is published, it shall specify therein-

- the contents of its memorandum as regards the objects, the liability of members and the amount of share capital of the company, and
- the names of the signatories to the memorandum and the number of shares subscribed for by them, and
- its capital structure.

Point of comparison with respect to new law-

- This section of the 2013 Act replaces section 66 (Newspaper advertisements of prospectus) of the 1956 Act.
- The new Act of 2013 now makes it mandatory to specify in the advertisement of prospectus, the contents of its memorandum as regards the objects, the liability of members and the amount of share capital of the company, and the names of the signatories to the memorandum and the number of shares subscribed for by them, and its capital structure. These particulars in an advertisement were not mandatory under the 1956 Act.

Abridged form of prospectus

The term has been defined in the definitional part of the supplementary.

Issue of application forms for securities- This section 33 of the Companies Act, 2013 provides that every form of application issued for the purchase of any securities of a company shall be accompanied by an abridged prospectus, except where form of application was issued bonafidely inviting a person to enter an underwriting agreement with respect to such securities, or in relation to securities which were not offered to the public. A copy of the prospectus shall be furnished to any person, before the closing of the subscription list and the offer. *If a company makes any default the company shall be punishable with fine of amount 50,000/- for each fault.

Point of comparison with respect to new law-

- This section 33 of the new Act, 2013 replaces section 56(3)[Matters to be stated and reports to be set out in prospectus] of the 1956 Act.
No change in the law except that the requirement as to the matters to be stated in the prospectus is applicable to shares or debentures in the old law, has been extended to any securities in the new law.

Instead of Information Memorandum, each application for securities shall be accompanied by abridged prospectus under the 2013 Act.

Penalty of ` 50,000 for the default has been fixed whereas in the 1956 Act it was maximum charged penalty.

**Shelf Prospectus – Section 31**

Shelf Prospectus- According to section 31 of the Companies Act, 2013, any class or classes of companies as prescribed by the Securities and Exchange Board of India may file a shelf prospectus with the registrar of companies at the stage of the first offer of securities for a period of one year.

No further issue of prospectus is required in respect of a second or subsequent offer of securities included in such prospectus for a period of 1 year.

Company shall also file information memorandum on new charges created, of any change in the financial position with the registrar of companies prior to the issue of a second or subsequent offer under shelf prospectus.

Where a company or any other person has received applications for the allotment of securities along with advance payments of subscription before the making of any such change, the company or other person shall intimate the changes to such applicants.

Where an information memorandum is filed, every time an offer of securities is made with all the material facts with the registrar, such memorandum together with the shelf prospectus shall be deemed to be a prospectus.

**Point of comparison with respect to new law**-

- This section of the new Act, 2013 replaces Section 60 A (Filing of Shelf Prospectus) of the 1956 Act.

- This facility in the new Act is available to any class or classes of companies as prescribed by SEBI whereas the 1956 Act prescribes that this facility was available to any public financial institution, public sector bank or scheduled bank whose main object were financing..

- The facility of shelf prospectus as per the new law given in the 2013 Act, is no longer limited to financing entities.
Information Memorandum

Red Herring Prospectus- The expression "red herring prospectus" means a prospectus which does not include complete particulars of the quantum or price of the securities included therein.

According to section 32 of the Companies Act, 2013, red herring prospectus may be issued by a company prior to the issue of a prospectus and shall be filed with the registrar at least 3 days prior to the opening of the subscription list and the offer. Any variation between the red herring prospectus and the prospectus shall be highlighted as variations in the prospectus. Upon closing of the offer of securities, the details of information which are not included in the red herring prospectus is to be filed with the registrar and the SEBI.

Point of comparison with respect to new law-

1. This section of the Act 2013 replaces section 60 B (Information Memorandum) of the 1956 Act.

2. The new Act, 2013 only says about the filing of red herring prospectus and final prospectus and removes the filing of information memorandum as given under the 1956 Act.

3. Requirement of individually intimating the variations between red herring prospectus and the prospectus, has been dispensed with.

Mis-statement in Prospectus and its consequences

An untrue statement or misstatement is one, which is misleading, in the form and context in which it has been included in the prospectus. Where a certain matter which is material enough has been omitted from the prospectus, and the omission is calculated to mislead those who act on the faith of the prospectus, the prospectus shall be deemed, in respect of such omission, to be a prospectus in which an untrue statement is included. The prospectus in these circumstances may also be described as a 'misleading prospectus'. The inclusion of mis-statement in a prospectus may lead to criminal and civil liability.

I. Criminal liability for mis-statements in prospectus- Sections 34 of the Companies Act, 2013, says that where any prospectus is issued or circulated or distributed, which includes any statement which is untrue or misleading in form or context in which it is included or where any inclusion or omission of any matter is likely to mislead, then every person who authorises the issue of such prospectus shall be liable for fraud.

Exception: This shall not apply to a person if he proves that:

(i) such statement or omission was immaterial, or

(ii) he had reasonable grounds to believe, and did up to the time of issue of the prospectus believe, that the statement was true or the inclusion or omission was necessary.
Point of comparison with respect to new law-

- This section of the Act, 2013 replaces Section 63 (Criminal liability for mis-statements in prospectus) of the 1956 Act.

- In the new law of 2013 Act, penalties are made much rigid than that of old law. Here the person who authorizes the issue of such prospectus shall be punishable for fraud under section 447.

- Class action suits may be taken against the guilty person as per section 37 of the 2013 Act.

II. Civil liability for mis-statements in prospectus- The section 35 of the Companies Act, 2013 provides that where any person subscribes for securities on the basis of misleading statements or inclusion or omission of any matter in the prospectus resulting in any loss or damages, then the company and every person who has authorized the issue of such prospectus or a director, promoter and the other, whosoever is liable- shall have to compensate every person who has sustained such loss or damage.

*Where a prospectus has been issued with intent to defraud the applicants for the securities of a company or any other person or for any fraudulent purpose, every person referred in this section shall be personally responsible, without any limitation of liability, for all or any of the losses or damages that may have been incurred by any person who subscribed to the securities on the basis of such prospectus.

Exception: No person shall be liable, if he proves that—

(a) having consented to become a director of the company, he withdrew his consent before the issue of the prospectus, and that it was issued without his authority or consent; or

(b) the prospectus was issued without his knowledge or consent, and that on becoming aware of its issue, he forthwith gave a reasonable public notice that it was issued without his knowledge or consent.

Point of comparison with respect to new law-

- This section of the Act, 2013 replaces Section 62 (Civil liability for mis-statements in prospectus) of the 1956 Act.

- No significant difference. Though section has been more simplified stating the conditions when the company and every person shall be liable to pay compensation to every person who has sustained loss/damage and the exceptions of the same. Civil liability is also extended to experts. Now apart from untrue statement, civil liability will also arise in case of inclusion or omission of any matter which is misleading.

- Class action suits may be taken against the guilty person as per section 37 of the 2013 Act.
III. Public offer of securities to be in dematerialized form - This section 29 of the Companies Act, 2013 seeks to provide that public company making public offer and such other class or classes of companies, shall issue the securities only through dematralised form.

The provision says:

(i) Issue of securities in dematerialized form: According to the provisions (a) every company making public offer; and (b) such other class or classes of public companies as may be prescribed, shall issue the securities only in dematerialised form by complying with the provisions of the Depositories Act, 1996 and the regulations made thereunder.

(ii) In case of other companies: Whereas other companies, may convert their securities into dematerialised form or issue its securities in physical form in accordance with the provisions of this Act or in dematerialised form in accordance with the provisions of the Depositories Act, 1996 and the regulations made thereunder.

Point of comparison with respect to new law -

This section of the 2013 Act replaces section 68B(Initial offer of securities to be in dematerialized form in certain cases) of the 1956 Act.

Every company making public offer and such other class or classes of public companies as may be prescribed shall issue the securities only in dematerialized form by complying with the provisions of the Depositories Act, 1996 and the regulations made thereunder. Such enabling provisions were not there in the 1956 Act.

The requirement that only a company making initial public offer of any security for a sum of ten crore rupees or more, shall require to issue securities in dematerialized form, has been dispensed with.

IV. Punishment for fraudulently inducing persons to invest money - This section 36 of the Companies Act, 2013 provides that such persons who fraudulently induces persons to invest money by making statement which is false, deceptive, misleading or deliberately conceals any facts, shall be punishable for fraud under section 447.

According to the section, any person shall be liable for fraud who, knowingly or recklessly, makes any statement, promise or forecast which is false, deceptive or misleading, or deliberately conceals any material facts, to induce another person to enter into, or to offer to enter into,—

(a) any agreement for acquiring, disposing of, subscribing for, or underwriting securities; or

(b) any agreement, the purpose of which is to secure a profit to any of the parties from the yield of securities or by reference to fluctuations in the value of securities; or

(c) any agreement for obtaining credit facilities from any bank or financial institution.

Point of comparison with respect to new law -

This section of the 2013 Act replaces section 68B(Initial offer of securities to be in dematerialized form in certain cases) of the 1956 Act.
This section of the new Act, 2013 replaces section 68 (Penalty for fraudulently inducing persons to invest money) of the 1956 Act.

The new law provides for penalty for fraudulently inducing persons to invest money in securities with the more rigid punishment.

The 2013 Act prescribes punishment for falsely inducing another person to enter into an agreement to obtain credit facilities from any bank or financial institution has also been provided.

Class action suits may be taken against the guilty person as per section 37 of the 2013 Act.

V. Action by affected persons - The section 37 of the Companies Act, 2013, provides that a suit may be filed or any other action may be taken by any person, group of persons or any association of persons who have been affected by any misleading statement or the inclusion/ omission of any matter in the prospectus.

Point of comparison with respect to new law-

This new provision enables class action by person, group of persons or any association of persons affected by misleading prospectus. This section is applicable for section 34, 35 & 36 of the 2013 Act.

VI. Punishment for personation for acquisition, etc., of securities - According to this section 38 of the Companies Act, 2013, those persons who apply in a fictitious name or make multiple applications or otherwise induce a company to allot or register any transfer of securities in fictitious name shall be liable for fraud. And the amount so received through disgorgement of gain, seizure and disposal of such securities, shall be credited to the IEPF (Investor Education and Protection Fund).

Point of comparison with respect to new law-

This section of the new Act, 2013 replaces section 68A (Impersonation for acquisition, etc., of shares) of the 1956 Act.

The new law contained under the 2013 Act provides for the stringent punishment of fraud for the impersonation for acquisition etc. of the securities and the disgorgement provisions.

Offer for sale or prospectus by implication or deemed prospectus

Document containing offer of securities for sale to be deemed prospectus - The section 25 of the Companies Act, 2013 seeks to provide that any document by which the offer or sale of shares or debentures to the public is made shall for all purpose be treated as prospectus issued by the company.

Act lays down the following provisions-
(i) Document by which offer for sale to the public is made: According to the given provision where a company allots or agrees to allot any securities of the company to all or any of those securities being offered for sale to the public, then any document by which the offer for sale to the public is made shall be deemed to be a prospectus issued by the company.

(ii) Contents of prospectus and the liability: All enactments and rules of law as to the contents of prospectus and as to liability in respect of mis-statements, in and omissions from prospectus, or otherwise relating to prospectus, shall apply with the modifications [as specified in sub-sections (3) and (4)] and shall have effect as if the securities had been offered to the public for subscription and as if persons accepting the offer in respect of any securities were subscribers for those securities.

The liability, if any, of the persons by whom the offer is made in respect of mis-statements contained in the document or otherwise in respect thereof, remains same as that in the case of a prospectus.

(iii) Securities must be offered for sale to the public: For the purposes of this Act, it shall be evident that an allotment of, or an agreement to allot, securities was made with a view to the securities being offered for sale to the public if it is shown—

(a) that an offer of the securities or of any of them for sale to the public was made within six months after the allotment or agreement to allot; or

(b) that at the date when the offer was made, the whole consideration to be received by the company in respect of the securities had not been received by it.

*(iv) Effect of an application of section 26 on this section: Section 26 relating to the matters stated in the prospectus, as applied by this section shall have effect, as if

(I) it required a prospectus to state in addition to the matters required by that section to be stated in a prospectus—

(a) the net amount of the consideration received or to be received by the company in respect of the securities to which the offer relates; and

(b) the time and place at which the contract where under the said securities have been or are to be allotted may be inspected;

(II) the persons making the offer were persons named in a prospectus as directors of a company.

[* This sub-section (3) is yet to be notified]

(v) Person making an offer is a company or firm: Where a person making an offer to which this section relates is a company or a firm, it shall be sufficient if the document, that is deemed to be prospectus, is signed on behalf of the company or firm by- (i) two directors of the company, or (ii) by not less than one-half of the partners in the firm, as the case may be.
Point of comparison with respect to new law-

This section of the Act, 2013 replaces section 64 (Document containing offer of shares or debentures for sale to be deemed prospectus) of the 1956.

Where a person making an offer to which this section relates is a company or a firm, such offer shall be signed on behalf of the company or firm by two directors of the company or by not less than one-half of the partners in the firm, as the case may be and not by their agent authorized in writing, as provided under the Companies Act, 1956.

Allotment of Shares

Allotment is an acceptance by the company of offers to take shares. It is an appropriation of shares to an applicant for shares and appropriation out of the previously unappropriated capital of the company.

Allotment of securities by company- The section 39 of the Companies Act, 2013 deals with the allotment of securities.

(i) Prohibition on allotment: No allotment of any securities of a company shall be offered to the public for subscription unless the minimum amount (stated in the prospectus) has been subscribed.

(ii) Payment of amount: The amount payable on application on every security shall not be less than five per cent of the nominal amount of the security, or such other percentage or amount, as may be specified by the Securities and Exchange Board.

(iii) Where no minimum amount is so received: Within a period of thirty days from the date of issue of the prospectus, or such other period as may be specified by the Securities and Exchange Board, the amount received shall be returned within such time and manner as may be prescribed.

(iv) Filing with the registrar a return of allotment: Wherever any company makes any allotment of securities, it shall file with the registrar a return of allotment.

(v) In case of default: The company and its officer who are in default shall be liable to fine varying from `1000/- to 1 lakh, whichever is less.

Point of comparison with respect to new law-

This section of the 2013 Act replaces section 69 (Prohibition of allotment unless minimum subscription received) and Section 75 (Return as to allotments) of the 1956 Act.

As per the 2013 Act, now apart from shares, return of allotment is also required to be filed for all types of securities.

The amount payable on application on every security has been modified i.e., not less than 5% of the nominal amount of the security or such other % or amount as may be specified by the Securities and Exchange Board.
Unlike the 1956 Act, the Companies Act, 2013 provides for the refunds where the stated minimum subscription not received within 30 days from the date of issue of prospectus or such other period as may be specified by SEBI.

There is also variation in the punishment in comparison to 1956 Act. [* This sub-section 4 of the provision is not yet notified]

Restriction on use of Application Moneys

Securities to be dealt with in stock exchanges - According to the section 40 of the Companies Act, 2013, every company making public offer, before making such offer, shall, make an application to one or more recognized stock exchange or exchanges to obtain permission for the securities to be dealt with, there such prospectus has to mention the name of the stock exchange. Any allotment made without permission shall be void. All the moneys received on application from public for subscription to the securities shall be kept in a separate bank account. In case of default, the company and every officer who is in default shall be punishable with fine/with imprisonment/both. *A company may pay commission to any person in connection with the subscription to its securities.

Moneys received on application shall be utilised for—

(a) adjustment against allotment of securities where the securities have been permitted to be dealt with in the stock exchange or stock exchanges specified in the prospectus; or

(b) the repayment of monies within the time specified by the Securities and Exchange Board, received from applicants in pursuance of the prospectus, where the company is for any other reason unable to allot securities.

Point of comparison with respect to new law-

This section of the 2013 Act replaces Section 73 (Allotment of shares and debentures to be dealt in on stock exchange) and Section 76 (Power to pay certain commissions and prohibition of payment of all other commissions, discounts, etc.) of the 1956 Act.

The new Act, 2013 requires that listing permission be obtained from one or more recognized stock exchanges before making public offer.

Limitation of time i.e., 10 weeks for obtaining the listing permission has been omitted by the new Act of 2013.

And also the provision given in the Act, 2013 does not stipulate conditions for payment of commission to any person in connection with the subscription to its securities though it may be prescribed under the rules.

[* This provision covered under the Sub-section 6 is yet to be notified]
Whether a company can buy-back its own share

(I) Transfer of certain sum to Capital Redemption Reserve Account (CRR) - According to section 69 of the Companies Act, 2013, when a company buy-back shares out of free reserves or out of security premium account, then an amount equal to the nominal value of the shares needs to be transferred to the capital Redemption Reserve Account. Such transfer details to be disclosed in balance sheet.

The above mentioned Capital Redemption Reserve account may be utilized for paying un-issued shares of the Company to the members as fully paid bonus shares.

Point of comparison with respect to new law-

- This section of 2013 Act replaces section 77 AA (Transfer of certain sums to capital redemption reserve account) of 1956 Act.

- The provision of 1956 Act was applicable only when the buy-back was out of free reserves. Whereas, the Companies Act, 2013 says that transfer of sums to CRR account is applicable in cases, when the buy back is out of free reserves, or securities premium account.

(II) Prohibition for buy-back in certain circumstances- As per section 70 of the Companies Act, 2013, a company cannot buy-back shares or other specified securities, directly or indirectly-

(a) through any subsidiary company including its own subsidiaries; or

(b) through investment or group of investment companies; or

(c) when the company has defaulted in the repayment of deposit or interest thereon, redemption of debentures or preference shares or payment of dividend or repayment of any term loan or interest thereon to any financial institution or bank.

The prohibition is lifted if the default has been remedied and a period of 3 years has elapsed after such default ceased to subsist.

(d) Company has defaulted in: filing of Annual Return (section 92), declaration of dividend (section 123) or punishment for failure to distribute dividend (section 127) and financial statement (section 129)

Point of comparison with respect to new law-

- This section 70 of the 2013 Act replaces section 77B (Prohibition for buy-back in certain circumstances) of 1956 Act.

- Under the Companies Act, 2013 now the company can buy-back even if it has defaulted in the repayment of deposit or interest thereon, redemption of debentures or preference shares or payment of dividend or repayment of any term loan or interest thereon to any financial institution or bank, provided the default has been remedied and a period of 3 years
have elapsed after such default ceased to subsist. *Whereas under the 1956 Act, prohibition on buy-back is ceased immediately when default ceased to subsist.*

The 2013 Act added a default under section 123 related to declaration of dividend in addition to the default related to the filing of the annual return, failure to distribute dividend and Financial statement provided under the Companies Act, 1956 where a company will not be able to directly/indirectly purchase its own shares or other specified securities.

**Membership**

Person whose name has been entered in the register of members are called as members of the company. Membership may be taken by: subscribing in the memorandum of the company or by agreeing in writing to become member of the company or by entering his name in the records of depository as beneficial owner of the shares in a company.

Every company has to maintain a register of members containing detailed particulars of each member, to be kept at the registered office of the company or any other place.

**Power to close register of members or debenture holders or other security holders - Section 91 of the Companies Act, 2013** says about the closing of the register of members. The provision lays down that-

(i) Closing of register of members, debenture holders or other security holder by giving previous notice - A company may close the register of members or the register of debenture-holders or the register of other security holders for any period or periods not exceeding in the aggregate forty-five days in each year, but not exceeding thirty days at any one time, subject to giving of previous notice of at least seven days or such lesser period as may be specified by Securities and Exchange Board for listed companies or the companies which intend to get their securities listed, in such manner as may be prescribed.

(ii) If the register of members or of debenture-holders or of other security holders is closed without giving the notice or after giving shorter notice than that so provided, or for a continuous or an aggregate period in excess of the limits specified above, the company and every officer of the company who is in default shall be liable to a penalty of 5,000/- for every day subject to a maximum of one lakh rupees during which the register is kept closed.

**Point of comparison with respect to new law**-

- This section of 2013 Act replaces section 154 (Power to close register of members or debenture holders) of the 1956 Act.
- The new Act of 2013 introduces the closure of the Registers of other security holders in the provision.
- Listed companies or the companies which intend to get their securities listed( i.e., the unlisted companies) close the register of members/ register of debenture-holders / the register of other security holders by giving a previous notice of at least 7 days/ such lesser
period as may be specified by Securities and Exchange Board. This law pertaining to listed companies is lacking in the 1956 Act.

In case of default with respect to the closure of register of member / register of debenture-holders / the register of other security holders, there the company and every officer of the company who is in default shall be liable to a penalty of five thousand rupees for every day during which register is closed but not exceeding one lakh rupees. This limit of penalty is lacking in 1956 Act.

Contracts

With respect to the company law, the term contract deals with a contract to take shares in company. It is governed by the same rule as any other contract. Execution of bills of exchange, deeds etc: Section 22 of the Companies Act, 2013 prescribes the law with respect to execution of the negotiable instruments and the deeds. It says that-

A bill of exchange, hundi or promissory note shall be deemed to have been made, accepted, drawn or endorsed on behalf of a company if made, accepted, drawn, or endorsed in the name of, or on behalf of or on account of the company, by any person acting under its authority, express or implied.

A company may, by writing under its common seal, authorise any person, either generally or in respect of any specified matters, as its attorney to execute other deeds on its behalf in anyplace either in or outside India.

A deed signed by such an attorney on behalf of the company and under his seal shall bind the company and have the effect as if it were made under its common seal.

Point of comparison with respect to new law-

There is no change in the law except that Sections 47 and 48 of the 1956 Act are combined and replaced by section 22 of the 2013 Act.
CHAPTER - IV

SHARE CAPITAL AND DEBENTURES
SHARE CAPITAL AND DEBENTURES

INTRODUCTION

Every company limited by shares must have a share capital. Share capital of a company refers to the amount invested in the company for it to carry out its operations. The share capital may be altered or increased, subject to certain conditions. A company’s share capital may be divided into small shares of different classes. The different classes of share capital and the rights attached to these classes are different.

NATURE OF SHARES

A share is the interest of a member in a company. Section 2(84) of the Companies Act, 2013 (hereinafter referred to as Act) “share” means a share in the share capital of a company and includes stock. It represents the interest of a shareholder in the company, measured for the purposes of liability and dividend. It attaches various rights and liabilities.

Share, debentures or other interest of any member in a company shall be movable property. It shall be transferable in any manner provided for in the articles of association of the company. A member may transfer any “other interest” in the company in the manner provided in the articles.

Section 60- Publication of authorised, subscribed and paid-up capital – According to the section 60 of the Companies Act, 2013, where any notice, advertisement or other official publication, or any business letter, etc. of a company contains a statement of the amount of the authorised capital of the company, there such mentioned documents shall also contain the amount of the capital which has been subscribed and the amount paid-up.

If any default is made, there the company shall be liable to pay a penalty of ten thousand rupees and every officer of the company who is in default shall be liable to pay a penalty of five thousand rupees, for each default.

Point of comparison with respect to new law-

- This section of 2013 Act replaces section 148(Publication of authorised as well as subscribed and paid-up capital) of the 1956 Act.
- No difference in the provision except that the new law fixed the penalty of rupees 5,000 for each default.

TYPES OF SHARE CAPITAL

A. EQUITY SHARE CAPITAL

Section 43 of the Act provides that the share capital of a company limited by shares shall be of two kinds:
(a) equity share capital—

(i) with voting rights; or

(ii) with differential rights as to dividend, voting or otherwise in accordance with such rules as may be prescribed; and

(b) preference share capital:

A Differential Voting Rights (DVR) share is like an ordinary equity share, but it provides fewer voting rights to the shareholder. The difference in voting rights can be achieved by reducing the degree of voting power. It is ideal for long term investors, typically small investors who seek higher dividend and are not necessarily interested in taking a voting position.

B. PREFERENCE SHARE CAPITAL

The other type of share capital is the “Preference share capital”. According to section 55 of the Act, a company limited by shares cannot issue any preference shares which are irredeemable. However a company limited by shares may, if so authorised by its articles, issue preference shares which are liable to be redeemed within a period not exceeding twenty years from the date of their issue.

Share Certificate

A share certificate is a document of title issued by the company declaring that the person named therein is the owner of a specified number of shares in the capital of the company.

Punishment for personation of shareholder- As per section 57 of the Companies Act, 2013, if any person deceitfully personate as an owner of any security or interest in a company, or of any share warrant or coupon issued in pursuance of 2013 Act, and thereby obtains or attempts to obtain any such security or interest or any such share warrant or coupon, or receives or attempts to receive any money due to any such owner, there such person shall be punishable with imprisonment for a term ranging from one year to three years and with fine from one lakh to five lakh rupees.

Point of comparison with respect to new law-

- This section of the 2013 Act replaces section 116 of the 1956 Act.
- The 2013 Act differs in the term of punishment and the penalty levied. The 2013 Act, lay down the minimum and maximum amount of fine and term of punishment unlike the 1956 Act prescribing only maximum penalty.

Fine: Minimum 1 lakh and maximum 5 lakhs

Term of imprisonment: Minimum 1 year and maximum 3 years.
A ‘call’ may be defined as a demand made by a company on its shareholders to pay the whole or a part of the balance, remaining unpaid on each share at any time during the continuance of a company.

I. Calls on shares of same class to be made on uniform basis - Section 49 of the Companies Act, 2013 provides that where any calls for further share capital are made on the shares of a class, such calls shall be made on a uniform basis on all shares falling under that class.

The shares of the same nominal value on which different amounts have been paid-up, shall not be deemed to fall under the same class.

Point of comparison with respect to new law -

- This section of 2013 Act replaces section 91 (Calls on shares of same class to be made on uniform basis) of the 1956 Act.
- No change in the provision.

II. Company to accept unpaid share capital, although not called up - As per section 50 of the Companies Act, 2013 a company may accept (if so, authorised by its articles) from any member the whole or a part of the amount remaining unpaid on any shares, even if no part of that amount has been called up.

A member of the company limited by shares shall not be entitled to any voting rights in respect of the amount paid by him until that amount has been called up.

Point of comparison with respect to new law -

- The section of the 2013 Act replaces section 92 (Power of company to accept unpaid share capital, although not called up) of the 1956 Act.
- No change in the provision with respect to 1956 Act.

III. Payment of dividend in proportion to amount paid-up - As per section 51 of the Companies Act, 2013, a company may, if so authorised by its articles, pay dividends in proportion to the amount paid-up on each share.

Point of comparison with respect to new law -

- This section of 2013 Act replaces section 93 (Payment of dividend in proportion to amount paid-up) of the 1956 Act.
- No change in the provision.

IV. Unlimited company to provide for reserve share capital on conversion into limited company - Section 65 of the Companies Act 2013, lays down the procedure for the conversion of the unlimited company into a limited company by increasing the nominal amount of each share or/
and by providing that the company cannot call unpaid portion of share capital except in the event of winding up.

Section says that an unlimited company having a share capital may, by a resolution, for registration as a limited company do either or both of the following things—

(a) increase the nominal amount of its share capital by increasing the nominal amount of each of its shares, but that no part of the increased capital shall be capable of being called up except in the event and for the purposes of the company being wound up;

(b) by providing that a specified portion of its uncalled share capital shall not be capable of being called up except in the event and for the company being wound up.

Point of comparison with respect to new law-

- This section of 2013 Act replaces Section 98 (Power of unlimited company to provide for reserve share capital on registration) of the 1956 Act.
- No change in the provision.

Refusal to Register Transfer and Appeal against Refusal of Transfer of Securities of a Public Company

Refusal of registration and appeal against refusal- Section 58 of the Companies Act, 2013, deals with process of the company on refusal to register the transfer of securities.

(i) If a private company limited by shares refuses, to register the transfer of, or the transmission of the right to any securities or interest of a member in the company, there the company shall send notice of the refusal to the transferor and the transferee or to the person giving intimation of such transmission, within a period of thirty days from the date on which the instrument of transfer, or the intimation of such transmission, was delivered to the company.

The securities or other interest of any member in a public company are freely transferable, subject to the contract/arrangement.

(ii) The transferee may appeal to the Tribunal against the refusal within a period of thirty days from the date of receipt of the notice or in case no notice has been sent by the company, within a period of sixty days from the date on which the instrument of transfer or the intimation of transmission, was delivered to the company.

(iii) If a public company without sufficient cause refuses to register the transfer of securities within a period of thirty days from the date on which the instrument of transfer or the intimation of transmission, is delivered to the company, the transferee may, within a period of sixty days of such refusal or where no intimation has been received from the company, within ninety days of the delivery of the instrument of transfer or intimation of transmission, appeal to the Tribunal.
(iv) The Tribunal, while dealing with an appeal may, after hearing the parties, either dismiss the appeal, or by order—

(a) direct that the transfer or transmission shall be registered by the company and the company shall comply with such order within a period of ten days of the receipt of the order; or

(b) direct rectification of the register and also direct the company to pay damages, if any, sustained by any party aggrieved.

(v) If a person contravenes the order of the Tribunal he shall be punishable with imprisonment for a term not less than one year but may extend to three years and with fine not be less than one lakh rupees but may extend to five lakh rupees.

The Ministry of Corporate Affairs issued an order called as, the Companies (Removal of Difficulties) Order, 2013 on 20th September, 2013. By this order Ministry clarified that until a date is notified by the Central Government under section 434(1) of the Companies Act, 2013 for transfer of all matters, proceedings or cases to the Tribunal constituted under Chapter 28 of the Companies Act, 2013, till the time the Board of Company Law Administration shall exercise the powers of the Tribunal under sections 24, 58 and section 59 in pursuance of the second proviso to section 465(1) of the Companies Act, 2013.

Point of comparison with respect to new law-

This section of 2013 Act replaces section 111 and 111A of the 1956 Act.

- The new law under the 2013 Act, reduces the period within which private company has to intimate refusal to register the transfer from 2 months to 30 days.

- In case of a public company, the time-limit for registration of transfer has been reduced to 30 days.

- The power of making the appeal has now been limited for the transferee only.

- The time period of making an appeal to the tribunal has been reduced from 2 months to 30 days.

- Where no notice is served there the appeal should be filed within 60 days.

- In case of a public company the time period of making an appeal to the tribunal has been simplified to 60 days. Where no notice received, the appeal should be filed within 90 days.

- The penalty in contravention of the order of the tribunal has been increased with an imprisonment from a term 1 to 3 years and fine from 1 lakh to 5 lakh rupees.

Transfer of Securities of a Public Company

Rectification of register of members- Section 59 of the Companies Act, 2013 provides the procedure for the rectification of register of members. The provision states that-
(i) **Remedy to the aggrieved for not carrying the changes in the register of members:** If the name of any person is, without sufficient cause, entered in the register of members of a company, or after having been entered in the register, is, omitted there from, or if a default is made, or unnecessary delay takes place in entering in the register, the fact of any person having become or ceased to be a member, the person aggrieved, or any member of the company, or the company may appeal in such form as may be prescribed, to the Tribunal, or to a competent court outside India, specified by the Central Government by notification, in respect of foreign members or debenture holders residing outside India, for rectification of the register.

(ii) **Order of the Tribunal:** The Tribunal may, after hearing the parties to the appeal by order, either dismiss the appeal or direct that the transfer or transmission shall be registered by the company within a period of ten days of the receipt of the order, or direct rectification of the records of the depository or the register and in the latter case, direct the company to pay damages, if any, sustained by the party aggrieved.

(iii) The provisions of this section shall not restrict the right of a holder of securities, to transfer such securities and any person acquiring such securities shall be entitled to voting rights unless the voting rights have been suspended by an order of the Tribunal.

(iv) Where the transfer of securities is in contravention of any of the provisions of the Securities Contracts (Regulation) Act, 1956, the Securities and Exchange Board of India Act, 1992 or this Act or any other law for the time being in force, there the Tribunal may, on an application made by the depository, company, depository participant, the holder of the securities or the Securities and Exchange Board, direct any company or a depository to set right the contravention and rectify its register or records concerned.

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Point of comparison with respect to new law-

- This section of 2013 Act replaces section 111 and 111A of the 1956 Act.
- The new law given under the 2013 Act prescribes the forum for the foreign members/debenture holders residing outside India to prefer an appeal to a competent court outside India as may be specified by the Central Government by notification.
- The 2013 Act enhanced the punishment. Company shall be punishable with fine from 1 to 5 lakh rupees and every officer in default punishable with imprisonment extending to 1 year or with fine levying from 1 lakh – 3 lakh rupees or with both.
Registration of a Charge

When parties agree that property shall be made available as security for the payment of debt in a transaction for value, this is termed as that charge is created.

The term charge has been defined in clause 2(16) of the Companies Act, 2013 as an interest or lien created on the property or assets of a company or any of its undertakings or both as security and includes a mortgage;

Every company is under an obligation to keep at its registered office a register of charges and enter therein all charges specifically affecting property of the company and all floating charges on the undertaking or any property of the company.

Punishment for contravention (Section 86) - As per section 86 of the Companies Act, 2013, if a company makes any default with respect to the registration of charges covered under Chapter VI, there penalty shall be levied, ranging from 1 lakh to 10 lakhs.

Every defaulting officer is punishable with imprisonment for a term not exceeding 6 months or fine which shall not be less than 25,000 rupees, but not exceeding 1 lakh rupees or both.

Point of comparison with respect to new law-

- This Section 142 (Penalties) of the 1956 Act is replaced by section 86 of the 2013 Act.

- The new Act of 2013 increases penalty ranging from Rs. 1 lakh to Rs. 10 lakhs and every officer of the company who is in default shall be punishable with imprisonment upto 6 months or with fine ranging from Rs. 25,000 to Rs.1,00,000, or with both (imprisonment and fine).

- Earlier under the Companies Act, 1956, (i) if the company defaulted in filing with the Registrar for registration the specified particulars, penalty for every officer in default which may extend to Rs. 5,000 for everyday during which the default continues. (ii) if the company makes default in complying with any other requirement of the Act relating to registration, there the company and every officer of the company who is in default, shall be punishable with fine which may extend to 10,000 rupees.
CHAPTER - V

MANAGEMENT AND ADMINISTRATION
Members’ Meetings

A company is composed of members, though it has its own entity distinct from members. The members of a company are the persons who, for the time being, constitute the company, as a corporate entity. However, a company, being an artificial person, cannot act on its own. It, therefore, expresses its will or takes its decisions through resolutions passed at validly held Meetings. The primary purpose of a Meeting is to ensure that a company gives reasonable and fair opportunity to those entitled to participate in the Meeting to take decisions as per the prescribed procedures.

The decision making powers of a company are vested in the Members and the Directors and they exercise their respective powers through Resolutions passed by them. General Meetings of the Members provide a platform to express their will in regard to the management of the affairs of the company.

Convening of one such meeting every year is compulsory. Holding of more general meetings is left to the choice of the management or to a given percentage of shareholders to exercise their power to compel the company to convene a meeting. Shareholder Democracy, Class Action Suits and Protection of interest of investors are the essence and attributes of the Companies Act, 2013.

Chapter VII of the Companies Act, 2013 read with Companies (Management and Administration) Rules, 2014 deals with the legal and procedural aspects of management and administration of companies.

A company is required to hold meetings of the members to take approval of certain business items, as prescribed in the Act.

Annual General Meeting (Section 96) :

Annual general meeting (AGM) is an important annual event where members get an opportunity to discuss the activities of the company. Section 96 provides that every company, other than a one
person company is required to hold an annual general meeting every year. Following are the key provisions regarding the holding of an annual general meeting:

**Holding of annual general meeting**

1. Annual general meeting should be held once every year.

2. First annual general meeting of the company should be held within 9 months from the closing of the first financial year. Hence it shall not be necessary for the company to hold any annual general meeting in the year of its incorporation.

3. Subsequent annual general meeting of the company should be held within 6 months from the closing of the financial year.

4. The gap between two annual general meetings should not exceed 15 months.

**Extension of validity period of AGM**

In case, it is not possible for a company to hold an annual general meeting within the prescribed time, the Registrar may, for any special reason, extend the time within which any annual general meeting shall be held. Such extension can be for a period not exceeding 3 months. No such extension of time can be granted by the Registrar for the holding of the first annual general meeting.

**Time and place for holding an annual general meeting**

An annual general meeting can be called during business hours, that is, between 9 a.m. and 6 p.m. on any day that is not a National Holiday. It should be held either at the registered office of the company or at some other place within the city, town or village in which the registered office of the company is situate. The Central Government is empowered to exempt any company from these provisions, subject to such conditions as it may impose.

“National Holiday” for this purpose means and includes a day declared as National Holiday by the Central Government.

**Default in holding the annual general meeting (Section 99)**

Section 99 provides that if any default is made in complying or holding a meeting of the company, the company and every officer of the company who is in default shall be punishable with fine which may extend to 1 lakh and in case of continuing default, with a further fine which may extend to Rs. 5,000/- for each day during which such default continues.

**Business to be transacted at annual general meeting:**

Sub-section (2) of Section 102 provides that all other businesses transacted at an Annual General Meeting except the following are special business:

(i) the consideration of financial statements and the reports of the Board of Directors and auditors;
(ii) the declaration of any dividend;

(iii) the appointment of directors in place of those retiring;

(iv) the appointment of, and the fixing of the remuneration of, the auditors.

4.4 Extraordinary General Meeting

All general meetings other than annual general meetings are called extraordinary general meetings.

There are various matters in relation to administration of a company’s affairs, which can be transacted only by resolutions of members in a general meeting. It is not always possible or expedient for consideration of such matters to wait until the next annual meeting. Thus, whenever the Board thinks fit or on the requisition of the members, an Extraordinary general meeting may be called.

1. Calling of extra ordinary general meeting (Section 100) –Section 100 of the Companies Act, 2013 provides that Board may call an extra-ordinary general meeting (EGM) whenever they deem it fit. They may also call EGM on the requisition of shareholders carrying at least 1/10th of paid up share capital or 1/10th of voting power. The requisition shall set out matters for which the meeting is called and be sent to the registered office. The Board has to within 21 days of the receipt of the requisition call an EGM not later than 45 days. If the Board fails to call the EGM in the time period provided then the requisitionists may call an EGM themselves within 3 months from the date of requisition.

Any reasonable expenses incurred by the requisitionists in calling the EGM shall be reimbursed to the requisitionists. Such amount of reimbursement shall be deducted by the company from any fee or remuneration payable (according to section 197 of the 2013 Act) to the directors who defaulted in calling the EGM.

Point of comparison with respect to new law-

1. This section 100 of the 2013 Act replaces section 169 of the 1956 Act.

2. Unlike the 1956 Act where the power to call EGM by Board was provided via Article 48 of Table A, this power is provided under the section 100 itself under the 2013 Act.
The 2013 Act does not provide for when the EGM called by requisitionists is held within 3 months from the date of requisition is adjourned to a date which is after the expiry of the 3 months.

The 2013 Act does not provide the case of joint holders where the requisitions signed by one or some of them shall have the same effect as signed by all or not.

II. Statement to be annexed to notice (Section 102) - According to section 102 of the Companies Act, 2013, a statement setting out all the material facts concerning each item of special business to be transacted at a general meeting, shall be annexed to the notice calling such meeting.

(1) Following are the material facts-

(a) the nature of concern or interest, financial or otherwise, if any, in respect of each items of—

(i) every director and the manager, if any; (ii) every other key managerial personnel; and (iii) relatives of the persons mentioned in point (i) and (ii).

(b) any 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.

(2) Special business-

(a) in the case of an annual general meeting, all business to be transacted thereat shall be deemed special, other than—

(i) the consideration of financial statements and the reports of the Board of Directors and auditors;

(ii) the declaration of any dividend;

(iii) the appointment of directors in place of those retiring;

(iv) the appointment of, and the fixing of the remuneration of, the auditors; and

(b) in the case of any other meeting, all business shall be deemed to be special.

However, where any item of special business to be transacted at a meeting of the company, relates to or affects any other company, the extent of shareholding interest in that other company of every promoter, director, manager, if any, and of every other key managerial personnel of the first mentioned company shall, if the extent of such shareholding is not less than two per cent of the paid-up share capital of that company, also be set out in the statement.

(3) Where any item of business which is to be considered at the meeting, the time and place where such document can be inspected shall be specified in the statement.

(4) In case of non-disclosure or insufficient disclosure in any statement made by the promoter, director, manager or other key managerial personnel which results into any benefit for themselves or their relatives, shall have to be compensated. Penal provision has been provided for any default in compliance.
The Ministry of Corporate Affairs vide General Circular No.15/2013, clarifies with respect to the implementation of this provision in order to facilitate proper administration of the Companies Act, 2013. The Circular states that all companies which have issued notices of general meeting on or after 12.9.2013, there the statement to be annexed to the notice shall comply with additional requirements as prescribed in section 102 of the Companies Act, 2013.

Point of comparison with respect to new law-

- Section 102 of the 2013 Act is the replacement of the section 173 of the 1956 Act.
- Section 102 specifically provides that in case of any non disclosure or non sufficient disclosure in the explanatory statement that results in accrual of any benefit to promoter, director, manager or KMP, then such person 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.
- The 2013, Act states that in case of special business to be transacted at the AGM then explanatory statement shall specify the extent of shareholding interest of promoters, directors, managers, and KMP, if their shareholding is 2% or more of the paid up share capital. Whereas extent of such shareholding interest mentioned in the 1956 Act is not less than twenty per cent of the paid-up share capital of that other company.

Procedure for convening and conduct of General Meetings

The business at a meeting is said to have been “validly transacted” if the members of the organisation or body concerned, whether or not they were present, are bound by the decision made there at. They cannot be so bound unless the meeting is validly held. For a meeting to be legally constituted there must be proper quorum, a proper person in the chair and proper compliance with the relevant provisions of the Articles of Association and the Act.

Chairman of meetings- Section 104 of the Companies Act, 2013 provides that members shall elect one among themselves to be the chairman by show of hands. The Section further says that if a poll is demanded on the election of the Chairman, the Chairman elected on a show of hands shall continue to be the Chairman of the meeting until some other person is elected as Chairman as a result of the poll, and such other person shall be the Chairman for the rest of the meeting.

This section is the replacement of section 175 of the 1956 Act. There is no change in the provision.

Quorum

Quorum means the minimum number of members who must be present in order to constitute a meeting and transact business thereat.

Quorum for meeting- Section 103 of the Companies Act, 2013 provides that where the articles of the company do not provide for a larger number, there the quorum shall depend on number of members as on date of a meeting.
No of Members as on date of Meeting | Quorum for the Meeting
--- | ---
Not more than 1000 Members | 5 Members personally present
More than 1000 but upto 5000 Members | 15 Members personally present
Exceeding 5000 Members | 30 Members personally present

(b) in the case of a private company, two members personally present, shall be the quorum for a meeting of the company.

**Consequences of no quorum**- If the quorum is not present within half-an-hour from the time appointed for holding a meeting of the company—

(a) the meeting shall stand adjourned to the same day in the next week at the same time and place, or

(b) to such other date and such other time and place as the Board may determine; or

(c) the meeting, if called by requisitionists (under section 100), shall stand cancelled:

**Notice of an adjourned meeting**- Where the meeting stands adjourned to the same day in the next week at the same time and place, or to such other date and such other time and place as the Board may determine, there the company shall give at least 3 days notice to the members either individually or by publishing an advertisement in the newspapers.

No quorum in an adjourned meeting- If at the adjourned meeting also, a quorum is not present within half-an-hour from the time appointed for holding meeting, the members present shall be the quorum.

**Point of comparison with respect to new law**-

![This section 103 of the 2013 Act replaces the section 174 of the 1956 Act.](image)

![Under the Companies Act, 2013, in case of a public company the quorum is decided on the basis of number of members. Thus, accordingly if the number of members as on date of meeting of a company are upto 1,000; more than 1,000 but upto 5,000 or more than 5,000 there the quorum is 5, 15 or 30 members respectively.](image)

![Under the Companies Act, 2013, if the General Meeting is adjourned for want of quorum, then in case of change in the day, time, place of the adjourned meeting, the company is required to give not less than 3 days notice to the members individually or by press announcement. However, no such provision was there in the Companies Act, 1956.](image)

Voting and the right to demand a poll
I. Restriction on voting rights (Section 106) – According to section 106 of the Companies Act, 2013, the company may by its articles restrict the member on exercising the voting right in respect of any shares registered in his name. Accordingly, no member shall exercise any voting right in respect of any shares registered in his name on which any calls or other sums presently payable by him have not been paid, or on which company has exercised any right of lien. A company shall not, except on the grounds as specified above, prohibit any member from exercising his voting right on any other ground.

On a poll taken at a meeting of a company, a member entitled to more than one vote, or his proxy, where allowed, or other person entitled to vote for him, as the case may be, need not, if he votes, use all his votes or cast in the same way all the votes he uses.

Point of comparison with respect to new law-

This section 106 of the 2013 Act replaces section 181 of the 1956 Act.

Under the Companies Act, 2013, the restriction prohibiting any member from exercising his voting right on any other ground other than non-payment of calls or lien on shares is applicable on both public as well as private company. Whereas, under the Companies Act, 1956, the restriction was applicable only on public company.

II. Voting by show of hands (Section 107) - Section 107 of the Companies Act, 2013 provides that at general meeting a resolution put to the vote of the meeting shall, unless a poll is demanded (section 109) or the voting is carried out electronically, be decided on a show of hands. A declaration by the Chairman of the meeting of the passing of a resolution or otherwise by show of hands and an entry to that effect in the minutes books shall be conclusive evidence of the fact of passing of such resolution or otherwise.

Point of comparison with respect to new law

No difference in the provision.

This section 107 of the 2013 Act replaces section 177 of the 1956 Act

Proxies

I. Proxies (Section 105) - Section 105 of the Companies Act, 2013 provides that a member, who is entitled to attend to vote, can appoint another person as a proxy to attend and vote at the meeting on his behalf. This section also provides the manner of appointing proxy. The provisions is as follows-

Law related to proxy-

(1) Any member of a company who is entitled to attend and vote at a meeting of the company shall be entitled to appoint another person as a proxy to attend and vote at the meeting on his behalf.

(2) A proxy shall not have the right to speak at such meeting and shall not be entitled to vote except on a poll.
(3) Unless the articles of a company otherwise provide, appointment of proxy shall not apply in the case of a company not having a share capital.

(4) *The section provides that the Central Government may prescribe a class or classes of companies whose members shall not be entitled to appoint another person as a proxy.

(5) *A person appointed as proxy shall act on behalf of such member or number of members not exceeding fifty and such number of shares as may be prescribed.

Procedure of appointment of proxy-

(1) In every notice calling a meeting of a company which has a share capital, or the articles of which provide for voting by proxy at the meeting, there shall appear, a statement that a member is entitled to attend and vote is entitled to appoint a proxy, or, where that is allowed, one or more proxies, to attend and vote instead of himself, and that a proxy need not be a member.

(2) If default is made in complying calling of meeting, every officer of the company who is in default shall be punishable with fine which may extend to five thousand rupees.

(3) Any provision contained in the articles of a company which specifies or requires a longer period than forty-eight hours before a meeting of the company, for depositing with the company or any other person any instrument appointing a proxy or any other document necessary to show the validity or otherwise relating to the appointment of a proxy in order that the appointment may be effective at such meeting, shall have effect as if a period of forty-eight hours had been specified in or required by such provision for such deposit.

(4) If for the purpose of any meeting of a company, invitations to appoint as proxy a person or one of a number of persons specified in the invitations are issued at the company's expense to any member entitled to have a notice of the meeting sent to him and to vote thereat by proxy, every officer of the company who knowingly issues the invitations as aforesaid or wilfully authorises or permits their issue shall be punishable with fine which may extend to one lakh rupees.

However, an officer shall not be punishable whereby reason only of the issue to a member at his request in writing of a form of appointment naming the proxy, or of a list of persons willing to act as proxies, if the form or list is available on request in writing to every member entitled to vote at the meeting by proxy.

(5) The instrument appointing a proxy shall—

(a) be in writing; and

(b) be signed by the appointer or his attorney duly authorised in writing or, if the appointer is a body corporate, be under its seal or be signed by an officer or an attorney duly authorised by it.

(6) *An instrument appointing a proxy, if in the form as may be prescribed, shall not be questioned on the ground that it fails to comply with any special requirements specified for such instrument by the articles of a company.
Every member entitled to vote at a meeting of the company, or on any resolution to be moved thereat, shall be entitled during the period beginning twenty-four hours before the time fixed for the commencement of the meeting and ending with the conclusion of the meeting, to inspect the proxies lodged, at any time during the business hours of the company, provided not less than three days’ notice in writing of the intention so to inspect is given to the company.

[* The provision covered under the sub-sections 1 & 7 is not notified]

Point of comparison with respect to new law-

- This section 105 of the Act, 2013 replaces section 176 of the 1956 Act.
- Under the Companies Act, 2013, the Central government is vested with powers to prescribe a class or classes of companies whose members will not be entitled to appoint proxies. While under the Companies Act, 1956, any member of a company entitled to attend and vote at a meeting of the company shall be entitled to appoint proxy.
- Under the Companies Act, 2013, a person appointed as proxy shall act on behalf of such member or number of members not exceeding fifty and such number of shares as may be prescribed.
- Under the Companies Act, 1956, a company can allow under its Articles, voting by proxy by show of hands. Under the Companies Act, 2013, there is no corresponding provision.
- Under the Companies Act, 1956, a member of a private company cannot appoint more than one proxy to attend on the same occasion. There is no corresponding provision under the Companies Act, 2013.

II. Representation of President and Governors in meetings- Section 112 of the Companies Act, 2013 provides that the President of India or the Governor of a State, if he is a member of a company, may appoint such person as he thinks fit to act as his representative at any meeting and to vote by proxy and postal ballot as a member of the company.

Point of comparison with respect to new law-

- This section 112 of the 2013 Act replaces Section 187A( Representation of the President and Governors in meetings of companies of which they are members) of the 1956 Act.
- No change in the provision.

III. Representation of corporations at meeting of companies and of creditors (Section 113) - This section 113 of the Companies Act, 2013 provides that where a body corporate is a member or a creditor( including a holder of debentures) of a company, by resolution of its Board of Directors or other governing body, authorises such person to act as its representative at any meeting of the company, or any class of members of the company; at any meeting of any creditors of the company, there all these persons so authorised shall be entitled to exercise the same rights and powers, including the right to vote by proxy and by postal ballot, on behalf of the body corporate which he represents as if it were an individual member, creditor or holder of debentures of the company.
Point of comparison with respect to new law-

- This section of the 2013 Act replaces section 187 (Representation of corporations at meetings of companies and of creditors) of the 1956 Act.
- No change in the provision.

Resolution

The purpose of a meeting is to arrive at decisions and the sense of a meeting is ascertained by voting upon proposals put to the meeting. A formal proposal put to the meeting is resolution. A company expresses its will by the mean of resolutions. There are only two kinds of resolutions under the Act, ordinary and special. Some writers classify resolutions into three types namely, ordinary, special and resolutions requiring special notice.

I. Ordinary and special resolutions- Section 114 of the Companies Act, 2013 provides that a resolution shall be an ordinary resolution if the notice required under this Act has been duly given and it is required to be passed by the votes cast (whether on a show of hands, or electronically or on a poll) in favour of the resolution, including the casting vote, (Chairman) by members who vote in person, or where proxies are allowed, by proxy or by postal ballot, exceed the votes cast against the resolution by members.

A resolution shall be a special resolution when it is duly specified in the notice calling the general meeting and the votes cast in favour of the resolution (whether on a show of hands, or electronically or on a poll) by members who vote in person or by proxy or by postal ballot are required to be not less than three times the number of the votes cast against the resolution by members.

Point of comparison with respect to new law-

- This section of the 2013 Act replaces section 189 (Ordinary and special resolutions) of the 1956 Act.
- No change in the provision.

II. Resolutions passed at adjourned meeting- Section 116 of the Companies Act, 2013 provides that where a resolution is passed at an adjourned meeting (of a company, or the holders of any class of shares in a company; or the Board of Directors of a company) there the resolution shall, be treated as having been passed on the date it was actually passed, and not on any earlier date.

Point of comparison with respect to new law-

- This section of the 2013 Act replaces section 191 (Resolutions passed at adjourned meetings) of the 1956 Act.
- No change in the provision.

III. Circulation of members’ resolution-
COMPANIES ACT, 2013

(1) **Notice to members** - As per section 111 of the Companies Act, 2013, a company shall, on requisition in writing of such number of members, as required in section 100 (Calling of EGM), give notice to members of any resolution which may properly be moved and is intended to be moved at a meeting; and circulate to members any statement with respect to the matters referred to in proposed resolution or business to be dealt with at that meeting.

(2) **Exemption from serving notice** - A company shall not be bound under this section to give notice of any resolution or to circulate any statement, unless—(a) a copy of the requisition signed by the requisitionists (or two or more copies which, between them, contain the signatures of all the requisitionists) is deposited at the registered office of the company,— (i) in the case of a requisition requiring notice of a resolution, not less than six weeks before the meeting; (ii) in the case of any other requisition, not less than two weeks before the meeting; and (b) there is deposited or tendered with the requisition, a sum reasonably sufficient to meet the company’s expenses in giving effect thereto.

Where however, after a copy of a requisition requiring notice of a resolution has been deposited at the registered office of the company, an annual general meeting is called on a date within six weeks after the copy has been deposited, the copy, although not deposited within the time required by this sub-section, shall be deemed to have been properly deposited for the purposes thereof.

(3) **Exception from circulation of any statement** - The company shall not be bound to circulate any statement, if on the application either of the company or of any other person who claims to be aggrieved, there the Central Government, by order, declares that the rights conferred are being abused to secure needless publicity for defamatory matter.

(4) **Order to bear the cost** - An order made may also direct that the cost incurred by the company shall be paid to the company by the requisitionists, notwithstanding that they are not parties to the application.

(5) **Default in contravention of the provision** - If any default is made in complying with the provisions of this section, the company and every officer of the company who is in default shall be liable to a penalty of twenty-five thousand rupees.

**Point of comparison with respect to new law** -

- This section replaces section 188 of the 1956 Act.
- Under the Companies Act, 2013, the eligibility criteria for making requisition for circulation has been modified.
- Under the Companies Act, 2013, the provision relating to circulation of statement of not more than 1,000 words by the members has been dispensed with.
- Under the Companies Act, 2013 the exemption given to Banking company related to not circulating any statement has been withdrawn.
- Under the Companies Act, 2013 the penalty for contravention of circulation of members resolution has been increased.
CHAPTER - VI

ACCOUNTS
OF
COMPANIES
NOTES
Accounts of Companies

Requirement of Keeping Books of Account (Section 128)

Maintenance of books of account would mean records maintained by the company to record the specified financial transaction. It has been specifically provided that every company shall keep proper books of account. This section specifies the main features of proper books of account as under –

(i) The company must keep the books of account with respect to items specified in clauses (i) to (iv) of sub-section 2(13) of the Companies Act, 2013 hereinafter referred as Act, which defines “books of account”.

(ii) The books of account must show all money received and expended, sales and purchases of goods and the assets and liabilities of the company.

(iii) The books of account must be kept on accrual basis and according to the double entry system of accounting.

(iv) The books of account must give a true and fair view of the state of the affairs of the company or its branches.

“books of account” as defined in Section 2(13) includes records maintained in respect of—

(i) all sums of money received and expended by a company and matters in relation to which the receipts and expenditure take place;

(ii) all sales and purchases of goods and services by the company;

(iii) the assets and liabilities of the company; and

(iv) the items of cost as may be prescribed under section 148 in the case of a company which belongs to any class of companies specified under that section.

Place of Keeping Books of Account

Section 128(1) requires every company to prepare and keep the books of account and other relevant books and papers and financial statements at its registered office.

However, all or any of the books of accounts may be kept at such other place in India as the Board of directors may decide. When the Board so decides the company is required within seven days of such decision to file with the Registrar a notice in writing giving full address of that other place.

Maintenance of Books of account in electronic form

The maintenance of books of account and other books and papers in electronic mode is permitted and is optional. Such books of accounts or other relevant books or papers maintained in electronic mode shall remain accessible in India so as to be usable for subsequent use (the Companies (Accounts) Rules, 2014).

Inspection by directors

As provided in sub-section (3), any director can inspect the books of accounts and other books
and papers of the company during business hours. The expression "Books and Papers" has been defined in section 2(12) which includes accounts, deeds, vouchers, writings and documents. The company is, therefore, required to make available the aforesaid books and papers for inspection by any directors. Such inspection may be done by any type of director-nominee, independent, promoter or whole time.

The proviso to sub-section 3 provides that a director of the Company can inspect the books of accounts of the subsidiary, only on authorisation by way of the resolution of Board of Directors.

**Persons responsible to maintain books**

The person responsible to take all reasonable steps to secure compliance by the company with the requirement of maintenance of books of accounts etc. shall be: (sub-section 6)

i) Managing Director,

ii) Whole-Time Director, in charge of finance

iii) Chief Financial Officer

iv) Any other person of a company charged by the Board with duty of complying with provisions of section 128.

**SECTION 129: FINANCIAL STATEMENT**

This Section seeks to provide that the financial statements shall give a true and fair view of the state of affairs of the companies in the form as provided for different class or classes in Schedule III and shall comply with accounting standards. Insurance companies, banking company, companies engaged in generation / supply of electricity or any other class of companies shall make financial statements in the form as has been specified in or under the Act governing such companies.

**Definition of Financial Statement**

Financial Statement is defined under Section 2 (40), to include -

- Balance Sheet
- Profit and Loss account or Income and Expenditure account
- Cash flow Statement
- Statement of change in equity, if applicable
- any explanatory notes annexed to or forming part of financial statements, giving information required to be given and allowed to be given in the form of notes.

However, the financial statement with respect to one person company, small company and dormant company, may not include the cash flow statement.

Financial statements should be prepared for financial year and shall be in form as per Schedule III.

**SECTION 133: CENTRAL GOVERNMENT TO PRESCRIBE ACCOUNTING STANDARDS**

The Central Government may prescribe the standards of accounting or any addendum thereto,
as recommended by the Institute of Chartered Accountants of India, constituted under section 3 of the Chartered Accountants Act, 1949, in consultation with and after examination of the recommendations made by the National Financial Reporting Authority. Till the constitution of NFRA, National Advisory Committee on Accounting Standards (NACAS) is still empowered to do the work allocated to NFRA under new Act. The standards of accounting as specified under the Companies Act, 1956 shall be deemed to be the accounting standards until accounting standards are prescribed by the Central Government.

SECTION 135 : CORPORATE SOCIAL RESPONSIBILITY

This section seeks to provide that every company having specified net worth or turnover or net profit during any financial year shall constitute the Corporate Social Responsibility Committee of the Board. The composition of the committee shall be included in the Board’s Report. The Committee shall formulate policy including the activities specified in Schedule VII. It further provides that the Board shall ensure that atleast two per cent of average net profits of the company made during three immediately preceding financial years shall be spent on such policy every year. If the company fails to spend such amount the Board shall give in its report the reasons for not spending.

There was no corresponding provision in the Companies Act, 1956 but Ministry of Corporate Affairs, Government of India had brought ‘Corporate Social Responsibility Voluntary Guidelines, 2009’ in December, 2009. According to these guidelines, each business entity should formulate a CSR policy to guide its strategic planning and provide a roadmap for its CSR initiatives, which should be an integral part of overall business policy and aligned with its business goals. The policy should be framed with the participation of various level executives and should be approved by the Board.

The CSR Policy is expected to normally cover following core elements:

a) Care for all stakeholders b) Ethical functioning
c) Respect for workers’ rights and welfare d) Respect for human rights
e) Respect for environment
f) Activities for social and inclusive development

What is CSR

Corporate Social Responsibility – The term ‘Corporate Social Responsibility’ (CSR) term is not defined in the Companies Act, 2013.

CSR has many interpretations but can be understood to be a concept imposing a liability on the Company to contribute to the society (whether towards environmental causes, educational promotion, social causes etc.) along with the reinforced duty to conduct the business in an ethical manner.

Corporate Social Responsibility (CSR) is a form of self-regulation integrated into a business model. It is also known as corporate conscience, corporate citizenship, social performance or sustainable business/responsible business.

CSR involves both internal as well as external stakeholders. Internal stakeholders include the employees of the company whereas external stakeholders include community & environment,
customers, vendors, shareholders, government etc. To carry out CSR effectively, it is essential that it has to be driven from top. So leadership is very important in all CSR activities and it is the need of the hour to develop next generation of globally responsible leaders.

Application of Provision

Companies having net worth of Rs. 500 crores or more or turnover of Rs. 1,000 crores or more or net profit of Rs. 5 crores or more during any financial year shall constitute a CSR Committee of Board comprising of 3 or more directors, one of whom shall be an independent director.

Composition of CSR Committee

The CSR committee shall consist of three or more directors, out of which one director shall be an independent director. The presence of an Independent Director shall ensure that the Committee is not just a quasi-committee addressing the whims of the Board, but is in fact, taking up an initiative. The composition of such Corporate Social Responsibility Committee shall have to be disclosed in the Board’s Report as required under Section 134(4).

An unlisted public company or a private company which is not required to appoint an independent director shall have its CSR Committee with independent director.

A private company having only two directors on its Board shall constitute its CSR Committee with two such directors.

With respect of foreign company, the CSR Committee shall comprise of at least two persons of which one person resident in India and another person shall be nominated by the foreign company.

CSR Activities

The Companies Act, 2013 does not prescribe the methodology by which CSR activities are to be undertaken by the company. Companies have been given flexibility to decide the activity within the framework, choose programmes, implement in the manner it desires, monitor it and ensure compliance of its own CSR policy. However, the CSR activities may be undertaken by way of the following methods:

a) By Charity: Company can donate money to various charitable trusts, societies, NGOs etc. who work for social economic welfare of society.

b) By Contract: Company can hire an NGO or any other agency like that which can carry out the projects on behalf of the company.

c) By Itself: Company can take up a project on its own or create its own trust and use its own staff for its proper working/ monitoring or through other trusts/ societies.

Schedule VII describes the following activities to be undertaken by the company in CSR activities which are as detailed below:

(i) eradicating hunger, poverty and malnutrition, providing preventive health care and sanitation and making available safe drinking water;

(ii) promoting education including special education and employment enhancing vocation skills especially among children, Women, elderly, and the differently abled and livelihood enhancement projects;
(iii) promoting gender equality, empowering women, setting up homes and hostels for women and orphans; setting up old age homes, day care centres and such other facilities for senior citizens and measures for reducing inequalities faced by socially and economically backward groups;

(iv) ensuring environment sustainability, ecological balance, protection of flora and fauna, animal welfare, agroforestry, conservation of natural resources and maintaining quality of soil, air and water;

(v) protection of national heritage, art and culture including restoration of building and sites of historical importance and works of art; setting up public libraries; promotion and development of traditional arts and handicrafts;

(vi) measures for the benefits of armed forces veterans, war widows and their dependents;

(vii) training to promote rural sports, nationally recognized sports, paralympic sports and Olympic sports;

(viii) contribution to the Prime Minister’s National Relief Fund or any other fund set up by the Central Government or the State Governments for socio-economic development and relief and welfare of the Scheduled Castes, the Scheduled Tribes, other backward classes, minorities and women;

(ix) contributions or funds provided to technology incubators located within academic institutions which are approved by the Central Government;

(x) rural development projects

Role of the Board
The Board of every company shall –

1. The Board to compose a Corporate Social Responsibility Committee.

2. After receiving recommendation and policy made by the Corporate Social Responsibility Committee, approve and take steps to implement / execute the CSR policy for the company and disclose such policy –

i) in the Board’s Report as per sub-section (3) of section 134 pertaining to a financial year commencing on or after the 1st day of April, 2014; and

ii) also place the contents of policy on its Company’s website, if any, in form prescribed under Companies (Corporate Social Responsibility Policy) Rules, 2014.

3. Ensure that the activities which formulate by CSR Committee in the Policy are duly undertaken by the company.

4. Ensure that the company spends in every financial year, at least two per cent of the average net profits (to be calculated in accordance with the provisions of Sec. 198) of the company made during the three immediately preceding financial years, in pursuance of its Corporate Social Responsibility Policy. The company shall give preference to the local area and areas around it where it operates, for spending the amount earmarked for Corporate Social Responsibility activities as per CSR Policy.

5. If the company fails to spend such amount, the Board shall, in its report made under Section 134(3)(o) specify the reasons for not spending the amount. The intention is that company should spend on approved CSR activities or explain the reasons for not so spending in its Board report.

Penalty
The Companies Act requires that -
COMPANIES ACT, 2013

i) The Board’s report shall disclose the composition of the Corporate Social Responsibility Committee as per sub-section (3) of section 134;

ii) If the company fails to spend such amount (i.e. at least two percent of the average net profit), the Board shall disclose and specify the reasons for not spending the amount in its report as per Clause (o) of sub-section (3) of section 134.

As per section 134 of Companies Act, 2013 if the Company fails to disclose such information, it shall be punishable with fine, which shall not be less than fifty thousand rupees but which may extend to twenty-five lakh rupees and every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to three years or with fine which shall not be less than fifty thousand rupees but which may extend to five lakh rupees or with both.

SECTION 136: RIGHT OF MEMBER TO COPIES OF AUDITED FINANCIAL STATEMENT

This section seeks to provide that a copy of financial statements including consolidated financial statement, if any, auditor’s report along with annexures/attachments shall be sent to every member, every trustee for the debenture holder and all other persons who are so entitled, twenty one days before the date of general meeting. The provision of this section shall be deemed to be complied if a listed company may make available the copies of the documents for inspection at its registered office during working hours for a period of twenty-one days before the date of the meeting and a statement containing the salient features of such documents in Form AOC-3 prescribed by the Central Government or the documents and sent the same to every stake holder.

In case of all listed companies and such public companies which have a net worth of more than one crore rupees and turnover of more than ten crore rupees, the financial statements may be sent:

(a) by electronic mode to such members whose shareholding is in dematerialised format and whose email Ids are registered with Depository for communication purposes;

(b) where Shareholding is held otherwise than by dematerialized format, to such members who have positively consented in writing for receiving by electronic mode; and

(c) by despatch of physical copies through any recognised mode of delivery as specified under section 20 of the Act, in all other cases.

**Member’s, Debenture trustee’s right to get copies of annual accounts**

According to sub-section (1) of this section, every member of the company, the trustee for the debenture-holders and every other person being the person so entitled, is entitled to get from the company, every year, a copy of financial statement including consolidated financial statements (if applicable), which are to be laid at a general meeting of the company, comprising of:-

i) Balance Sheet; ii) Profit and Loss Account; iii) Cash Flow Statement

iv) Statement of change in equity; v) Auditor’s Report
vi) Director's Report; vii) Every other document required by law to be annexed or attached to the financial statement.

This right to have copies of financial statements is over and above the provisions of Section 101 which provides for right to receive notice of general meeting.

**Obligation of listed company**

Proviso to sub-section (1) provides that in the case of a company whose shares are listed on a recognised stock exchange, provisions shall be deemed to have been complied with, if the copies of the documents are made available for inspection at its registered office, during working hours, for a period of twenty-one days before the date of the meeting and a statement containing the salient features of such documents in the prescribed form or copies of the documents, as the company may deem fit, is sent to every member of the company and to every trustee for the holders of any debentures issued by the company not less than twenty-one days before the date of the meeting.

Every listed company is required to supply a copy of the complete financial statements with auditor's report and director's report, to such shareholders who ask for full financial statements.

Every listed company is also required to place its financial statements including consolidated financial statements, if any, and all other documents required to be attached thereto, on its website, which is maintained by or on behalf of the company.

In case of companies not having share capital, the financial statements and other documents required to be attached or annexed to it shall be required to be sent to all members and debenture holders, even if they are not entitled to receive the notice of general meeting in terms of section 101.

**Right to inspect**

Every company shall be under an obligation to allow every member or trustee of the holder of any debentures issued by the company to inspect the financial statements and documents to be attached thereto stated under sub-section (1) at its registered office during business hours. This right is not available to debenture holders.

In case of listed companies, copies of documents shall be available for inspection at its registered office during working hours for a period of 21 days before the date of meeting and company may send the salient features of financial statements to members and debenture trustees in prescribed form. That will be sufficient compliance of sub section (1).

**Penal provisions**

If any default is made in complying with the provisions of this section, the company shall be liable to a penalty of –

i) twenty-five thousand rupees and

ii) every officer of the company who is in default shall be liable to a penalty of five thousand rupees.

Both penalties shall be imposed simultaneously.
SECTION 137: COPY OF FINANCIAL STATEMENT TO BE FILED WITH REGISTRAR

Section 137 requires every company to file the financial statements including consolidated financial statement together with Form AOC-4 with the Registrar within 30 days from the day on which the annual general meeting held and adopted the financial statements with such fees or additional fee as specified in Companies (Registration Offices and Fees) Rules, 2014.

If the financial statements are not adopted at the annual general meeting or adjourned annual general meeting, such unadopted financial statements along with the required documents be filed with the Registrar with in thirty days of the date of annual general meeting. The Registrar shall take them in his record as provisional, until the adoption at annual general meeting.

The One Person Company shall file the copy of financial statements duly adopted by its members within a period of one hundred and eighty days from the closure of financial year.

The company shall also attach the accounts of subsidiaries incorporated outside India and which have not established their place of business in India with the financial statements.

If annual general meeting has not been held, the financial statement duly signed along with the statement of facts and reasons for not holding the annual general meeting shall be filed with the Registrar within thirty days of the last days before which the annual general meeting should have been held.

If company fails to comply with the requirement of submission of financial statement before Registrar, the company shall be punishable with fine of one thousand rupees for every day during which failure continues subject to maximum of rupees ten lakh. The managing director and CFO if any, and, in the absence of such managing director or CFO, any other director who is charged by the Board with the responsibility of complying with the provisions of this section, in the absence of such director, all directors of the company shall be punishable with imprisonment for a term which may extend upto six months or with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees or with both.

SECTION 138: INTERNAL AUDIT

Classes of companies requiring Internal Audit

The following class of companies shall be required to appoint an internal auditor or a firm of internal auditors:-

(a) every listed company;

(b) every unlisted public company having –

(i) paid up share capital of fifty crore rupees or more during the preceding financial year; or

(ii) turnover of two hundred crore rupees or more during the preceding financial year; or

(iii) outstanding loans or borrowings from banks or public financial institutions exceeding one hundred crore rupees or more at any point of time during the preceding financial year; or

(iv) outstanding deposits of twenty five crore rupees or more at any point of time during the preceding financial year; and
(c) every private company having –

(i) turnover of two hundred crore rupees or more during the preceding financial year; or
(ii) outstanding loans or borrowings from banks or public financial institutions exceeding one hundred crore rupees or more at any point of time during the preceding financial year.

An existing company covered under any of the above criteria shall comply with the requirements of section 138 and this rule within six months of commencement of such section.

The Audit Committee of the company or the Board shall, in consultation with the Internal Auditor, formulate the scope, functioning, periodicity and methodology for conducting the internal audit.

The company board shall be free to appoint any practicing Chartered Accountant or a Cost Accountant or any other person whom it deems fit to be appointed as its internal auditor. For this purpose, company board may consider the nature and volume of business of company; qualifications, experience and capabilities of such person being appointed as auditor and scope of internal audit.

Who can be an Internal Auditor

a) a Chartered Accountant or;
b) a Cost Accountant or;
c) such other professional as may be decided by the Board to conduct internal audit of the functions and activities of the Company.
CHAPTER - VII

AUDIT
AND
AUDITORS
AUDIT AND AUDITORS

APPOINTING AUTHORITY FOR AUDITORS:

In term of section 139(1) of the Companies Act, 2013 read with rule 3 of Companies (Audit and Auditors) Rules, 2014 every company shall at the first annual general meeting, appoint an individual or a firm as an auditor who shall hold office from the conclusion of that meeting till the conclusion of its sixth annual general meeting (AGM) and thereafter till the conclusion of every sixth meeting and the manner and procedure of selection of auditors by the members of the company at such meeting shall be such as prescribed under:

(1) In case of a company that is required to constitute an Audit Committee under section 177, such committee, and, in cases where such a committee is not required to be constituted, the Board.

Section 139(6) of the Act stipulated that first Auditor of the Company other than Government Company, shall be appointed by the Board within 30 days of its date of registration and in case of failure to do so by Board of Directors, the members shall be informed and they shall appoint the same within 90 days from incorporation, who shall hold office till conclusion of first annual general meeting.

Conditions for appointment and notice to Registrar- Rule 4 of the Companies (Audit and Auditors) Rules, 2014 hereinafter referred in this chapter as Rule

As per second proviso of section 139(1) read with rule 4 stipulated that written consent of the auditor must be taken before appointment. The auditor appointed shall submit a certificate that:

(a) the individual/firm is eligible for appointment and is not disqualified for appointment under the Act, the Chartered Accountants Act, 1949 and the rules or regulations made thereunder;

(b) the proposed appointment is as per the term provided under the Act;

(c) the proposed appointment is within the limits laid down by or under the authority of the Act;

(d) the list of proceedings against the auditor or audit firm or any partner of the audit firm pending with respect to professional matters of conduct, as disclosed in the certificate, is true and correct.

Certificate shall also indicate whether the auditor satisfies the criteria provided in section 141 of the Act.

Company shall inform the auditor concerned of his or its appointment and also file a notice of such appointment with the Registrar in Form ADT-1 within 15 days of the meeting in which the auditor is appointed.

APPOINTMENT OF AUDITOR OF GOVERNMENT COMPANY- Section
The appointment of auditor in Government company of government controlled (directly/indirectly) company shall be held in accordance with the following provisions:

The First auditor shall be appointed by the Comptroller and Auditor General within 60 days from the date of incorporation and in case of failure to do so, the Board shall appoint auditor within next 30 days and on failure to do so by Board of Directors, it shall inform the members, who shall appoint the auditor within 60 days at an extraordinary general meeting (EGM), such auditor shall hold office till conclusion of first Annual General Meeting.

In case of subsequent auditor for existing government companies, the Comptroller & Auditor General shall appoint the auditor within a period of 180 days from the commencement of the financial year and the auditor so appointed shall hold his position till the conclusion of the Annual General Meeting.

In the case of a company whose accounts are subject to audit by an auditor appointed by the Comptroller and Auditor-General of India, be filled by the Comptroller and Auditor-General of India within thirty days. In case the Comptroller and Auditor-General of India does not fill the vacancy within the said period, the Board of Directors shall fill the vacancy within next thirty days.

The Act also provides that in case the Company has an Audit Committee, then all appointments of Auditor including filling of casual vacancy, shall be made after taking into account the recommendations of the Committee.

**ELIGIBILITY & QUALIFICATIONS OF AUDITOR**

Section 141 (1) & (2) of the Act prescribed the following eligibility and qualifications of auditor which are as under:

i. Only a Chartered Accountant (individual) or a firm where majority of partners practicing in India are Chartered Accountants can be appointed as auditor.

ii. Where a firm including a limited liability partnership (LLP) is appointed as an auditor of a company, only the partners who are chartered accountants shall be authorized to act and sign on behalf of the firm.

**DISQUALIFICATIONS OF AUDITOR**

Section 141 (3) of the Act read with Rule 10 prescribed the following persons shall not be eligible for appointment as an auditor of a company, namely:

- A body corporate, except LLP;
- An officer or employee of the company;
- Any partner/employee of officer or employee of company;
- A person who himself or his relative/partner is holding any security or interest in the company, or any company which is its holding, subsidiary, associate;
- A person whose relative is holding security or interest not exceeding Rs. one Lac face value in companies as mentioned above. Provided that this condition be also applicable in the case of a company not having share capital or other securities,
COMPANIES ACT, 2013

wherever relevant.

- A person who or whose relative or partner is indebted to the company or its subsidiary or its holding or associate company or a subsidiary of such holding company, in excess of rupees five lakh shall not be eligible for appointment;

- A person who or whose relative or partner has given a guarantee or provided any security in connection with the indebtedness of any third person to the company, or its subsidiary, or its holding or associate company or a subsidiary of such holding company, in excess of one lakh rupees shall not be eligible for appointment;

- A person or a firm who, whether directly or indirectly, has “business relationship” with the company, or its subsidiary, or its holding or associate company;

The term “business relationship” shall be construed as any transaction entered into for a commercial purpose, except – (i) commercial transactions which are in the nature of professional services permitted to be rendered by an auditor or audit firm under the Act and the Chartered Accountants Act, 1949 and the rules or the regulations made under those Acts; (ii) commercial transactions which are in the ordinary course of business of the company at arm’s length price – like sale of products or services to the auditor, as customer, in the ordinary course of business, by companies engaged in the business of telecommunications, airlines, hospitals, hotels and such other similar businesses.

- A person whose relative is a director or is in the employment of the company as a director or key managerial personnel;

- A person who is in full time employment elsewhere;

- Person who is auditor of more than 20 companies;

- A person who has been convicted by a court of an offence involving fraud and a period of ten years has not elapsed from the date of such conviction;

- Any person whose subsidiary or associate company or any other form of entity, is engaged as on the date of appointment in consulting and specialized services as provided in section 144.

According to section 141 (4) where a person appointed as an auditor of a company incurs any of the disqualifications mentioned as above after his appointment, he shall vacate his office as such auditor and such vacation shall be deemed to be a casual vacancy in the office of the auditor.

TERM OF AUDITOR- Section 139 (2) and Rule 5

Listed company or all unlisted public companies having paid up share capital of Rs. 10 crore or more, all private limited companies having paid up share capital of Rs. 20 crore or more, all companies having public borrowings from financial institutions, banks or public deposits of Rs. 50 fifty crores or more shall not appoint or re-appoint an individual as auditor for more than one term of 5 consecutive Years; and an audit firm as auditor for more than two terms of 5 consecutive years. These auditor (either individual/audit firm) can be re-appointed after cooling off period of 5 years. Three years transition period will be given to comply this requirement.
No audit firm shall be appointed as auditor of the company for a period of five years, if same firm presently having a common partner(s) to the previous audit firm, whose tenure has expired in a company immediately preceding the financial year.

The right of the company to remove the auditor or the right of the auditor to resign from such office of the company is not affected by this sub-section. Thus, an auditor can resign or be removed by the shareholders before completion of his term as discussed above. The firm shall include a limited liability partnership incorporated under the Limited Liability Partnership Act, 2008.

**RE-APPOINTMENT OF RETIRING AUDITOR-Section139 (9)**

At any annual general meeting, a retiring auditor shall be reappointed as auditor of the company except under the following circumstances:

(a) he is not qualified for re-appointment.
(b) he has given the company a notice in writing of his unwillingness to be re-appointed.
(c) a special resolution has been passed at that meeting appointing somebody else instead of him or providing expressly that retiring auditor shall not be re-appointed.

Section 139 (10) lays that where at any annual general meeting, no auditor is appointed or re-appointed, the existing auditor shall continue to be the auditor of the company.

**ROTATION OF AUDITORS- Section 139(3)**

Members of a company can provide for following by passing a resolution:

(a) In the audit firm appointed by it, the auditing partner and his team shall be rotated at such intervals as may be resolved by members; or
(b) The audit shall be conducted by more than one auditor.

A transition period of 3 years from the commencement of the Act has been prescribed for the company existing on or before the commencement of the Act, to comply with the provisions of the rotation of auditor.

**ROTATION OF AUDITORS ON EXPIRY OF THEIR TERM-Section 139 (4) and Rule 6**

Rotation of auditors on expiry of auditor’s term then same procedure will be followed as required for appointment of auditors.

Where a company has appointed two or more persons as joint auditors, the company may follow the rotation of auditors in such a manner that both or all of the joint auditors, as the case may be, do not complete their term in the same year.

**CASUAL VACANCY IN THE OFFICE OF AUDITOR-Section 139 (8)**

The provisions for filling of casual vacancy in the office of auditor are as follows:

(a) The Board of the company shall have power to fill the casual vacancy in the office of
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Auditor within 30 days in any case except where:

(i) the casual vacancy occurred due to resignation of the auditor, or

(ii) the company accounts are not subject to audit by an auditor appointed by the Comptroller and Auditor-General of India.

(b) In case casual vacancy has occurred due to resignation of auditor, such appointment should be approved by the company in general meeting convened within 3 months of the recommendation of the Board and auditor shall hold the office till the conclusion of the next annual general meeting.

(c) In case of a company whose accounts are subject to audit by an auditor appointed by the Comptroller and Auditor-General of India, such vacancy should be filled by the Comptroller and Auditor-General of India within 30 days. In case the Comptroller and Auditor-General of India does not fill the vacancy within the said period, the Board of Directors shall fill the vacancy within next 30 days.

(d) Appointment of auditors to fill casual vacancy shall be made after taking into account the recommendation of the audit committee.

REMOVAL OF AUDITOR-Section 140 (1) and Rule 7

The auditor appointed under section 139 may be removed from his office before the expiry of the term only by –

(i) Obtaining the prior approval of the Central Government by filling an application in form ADT-2 within 30 days of resolution passed by the Board

(ii) The company shall hold the general meeting within sixty days of receipt of approval of the Central Government for passing the special resolution.

(iii) The auditor concerned shall be given a reasonable opportunity of being heard.

RESIGNATION OF AUDITOR- Section 140 (2), 140 (3) and Rule 8

The auditor who has resigned from the company shall file a statement in Form ADT-3 indicating the reasons and other facts as may be relevant with regard to his resignation as follows:

(i) In case of other than Government Company, the auditor shall within 30 days from the date of resignation, file such statement to the company and the registrar.

(ii) In case of Government Company or government controlled company, auditor shall within 30 days from the resignation, file such statement to the company and the Registrar and also file the statement with the Comptroller and Auditor General of India (CAG).

The onus to file such statement containing relevant facts and reasons for resignation is on the resigning auditor and any contravention of sub clause (2) is punishable with monetary fine which could be minimum Rs. 50,000 and maximum Rs. 5 lakh.

REMUNERATION OF AUDITOR
Section 142 of the Act prescribed that the remuneration of the auditor of a company shall be fixed in its general meeting or in such manner as may be determined therein. Board may fix remuneration of the first auditor appointed by it. The remuneration will be in addition to the out of pocket expenses incurred by the auditor in connection with the audit of the company and any remuneration paid to him for any other service rendered by him at the request of the company.

**AUDITOR’S RIGHT TO ATTEND GENERAL MEETING - Section 146**

All notices of any general meeting shall be forwarded to the auditor of the company and he must attend any general meeting either by himself or through his authorised representative (qualified to be an auditor) and shall have right to be heard at such meeting on any part of the business which concerns him as the auditor.

**BRANCH AUDIT - SECTION 143 (8) AND RULE 12**

Branch Auditor: Accounts of branch office can be audited by –

1. The company’s auditor; or

2. Any other person, qualified to be and appointed as an auditor as per the provisions of the Act as branch auditor; or

3. In case of foreign branch, by the company’s auditor or by an accountant or a competent person appointed in accordance with the prevailing laws of the foreign country.

The branch auditor shall prepare a report on the accounts of the branch examined by him and the company’s auditor shall deal with such report in his audit report in a manner as he considers necessary.

**AUDITING STANDARDS - SECTION 143 (9) & (10)**

Every auditor must comply with the auditing standards. While the Central Government prescribes the Auditing Standards or addendums thereto, it shall consult with and take recommendations of the Institute of Chartered Accountants of India (ICAI) and the National Financial Reporting Authority (NFRA). Till such time the Auditing Standards are notified by the Central Government, the auditing standards specified by the ICAI are deemed to be the auditing standards.

**REPORTING OF FRAUDS BY AUDITOR - Section 143(12) to 143 (15) & Rule 13**

Section 143 (12) and Rule 13 provides that if the auditor of a company, in the course of the performance of his duties as auditor, has reason to believe that an offence involving fraud is being or has been committed against the company by officers or employees of the company, he shall report the matter to the Central Government immediately but not later than 60 days of his knowledge and after following the procedure indicated herein below:

(i) auditor shall forward his report to the Board or the Audit Committee, as the case may be, immediately after he comes to knowledge of the fraud, seeking their
reply or observations within 45 days;

(ii) on receipt of such reply or observations the auditor shall forward his report and the reply or observations of the Board or the Audit Committee along with his comments (on such reply or observations of the Board or the Audit Committee) to the Central Government within 15 days of receipt of such reply or observations;

(iii) in case the auditor fails to get any reply or observations from the Board or the Audit Committee within the stipulated period of 45 days, he shall forward his report to the Central Government along with a note containing the details of his report that was earlier forwarded to the Board or the Audit Committee for which he failed to receive any reply or observations within the stipulated time.

The report shall be in the form of a statement as specified in Form ADT-4 on the letter-head of the auditor containing postal address, e-mail address, contact number, Membership Number and be signed & sealed by the auditor and same shall be sent through Registered Post with AD/speed post followed by an e-mail in confirmation to the Secretary, MCA of the same.

AUDITOR NOT TO RENDER CERTAIN SERVICES (PROHIBITED SERVICES)- Section 144

An auditor shall provide to the company only such other services as are approved by the Board of Directors/ the audit committee, but which shall not include any of the following services (whether such services are rendered directly or indirectly to the company or its holding company or subsidiary company, namely:-

(a) accounting and book keeping services;
(b) internal audit;
(c) design and implementation of any financial information system;
(d) actuarial services;
(e) investment advisory services;
(f) investment banking services;
(g) rendering of outsourced financial services;
(h) management services; and
(i) any other kind of services as may be prescribed.

APPOINTMENT OF AUDITOR OTHER THAN RETIRING AUDITOR BY SPECIAL NOTICE- Section 140 (4)

Special notice shall be required from members proposing to move a resolution at the next annual general meeting to appoint a person other than the retiring auditor or to provide that the retiring auditor shall not be re-appointed.

Such special notice shall not be required in case where the retiring auditor has completed a consecutive tenure of five years or, as the case may be, ten years, as provided under sub-section (2) of section 139.
Following points are relevant for the purpose of special notice:

i. Company, on receipt of such special notice for removing auditor, should forthwith send a copy of the same to the retiring auditor.

ii. If the auditor makes a representation in writing to the company and requests for its notification to the members, the company shall

(a) state the fact of representation in any notice of resolution, and

(b) send copy of representation to members to whom notice of meeting is sent, whether before or after the receipt of representation by the company.

(c) if the copy of representation is not so sent, copy thereof should be filed with the Registrar.

iii. such representation should be of a reasonable length and not too long.

iv. For circulation to members, it should not be received by the company too late.

v. Auditor may require the company to read out the representation in the meeting if it is not so notified to members because it was too late or because of company’s default.

SIGNING OF AUDIT REPORTS - Section 145

Auditor shall sign the auditor’s report of the company. Any qualifications, observations or comments on financial transactions matters, which have any adverse effect on the functioning of the company mentioned in the auditor’s report shall be read before the company in general meeting and shall be open to inspection by any member of the company.

COST RECORDS & AUDIT– Section 148

Applicability for Cost Records:

Section 148 (1) read with Rule 3(1) of draft Companies (Cost Records and Cost Audit) Rules, 2013 provides the Central Government may direct, by an order to the prescribed class of companies (engaged in the production of prescribed goods or providing prescribed services) to maintain the cost records.

Applicability for Cost Audit:

Section 148 (2) read with Rule 3(2) of draft Companies (Cost Records and Cost Audit) Rules, 2013 provide the Central Government, by order, may direct for the audit of cost records of class of companies, as mentioned in Rule 3 (1) of draft Companies (Cost Records and Cost Audit) Rules, 2013 and which have a net worth/turnover of such amount as may be prescribed shall be conducted in the manner specified in the order.
CHAPTER - VIII

APPOINTMENT AND QUALIFICATIONS OF DIRECTORS
APPoINTMENT AND QUALIFICATIONS OF DIRECTORS

Introduction

The Companies Act, 2013 does not contain an exhaustive definition of the term “director”. Section 2 (34) of the Act prescribed that “director” means a director appointed to the Board of a company.

A director is a person appointed to perform the duties and functions of director of a company in accordance with the provisions of the Companies Act, 2013.

Board of Directors

A company, though a legal entity in the eyes of law, is an artificial person, existing only in contemplation of law. It has no physical existence. It has neither soul nor body of its own. As such, it cannot act in its own person. It can do so only through some human agency. The persons who are in charge of the management of the affairs of a company are termed as directors. They are collectively known as Board of Directors or the Board. The directors are the brain of a company. They occupy a pivotal position in the structure of the company. Directors take the decision regarding the management of a company collectively in their meetings known as Board Meetings or at the meetings of their committees constituted for certain specific purposes.

Section 2 (10) of the Companies Act, 2013 defined that “Board of Directors” or “Board”, in relation to a company, means the collective body of the directors of the company.

Minimum/Maximum Number of Directors in a Company- Section 149(1)

Section 149(1) of the Companies Act, 2013 requires that every company shall have a minimum number of 3 directors in the case of a public company, two directors in the case of a private company, and one director in the case of a One Person Company. A company can appoint maximum fifteen directors. A company may appoint more than fifteen directors after passing a special resolution in general meeting and approval of Central Government is not required.

A period of one year has been provided to enable the companies to comply with this requirement.

Number of directorships- Section 165

Maximum number of directorships, including any alternate directorship a person can hold is 20. It has come with a rider that number of directorships in public companies/private companies that are either holding or subsidiary company of a public company shall be limited to 10. Further the members of a company may restrict abovementioned limit by passing a special resolution.

Any person holding office as director in more than 20 or 10 companies as the case may be before the commencement of this Act shall, within a period of one year from
such commencement, have to choose companies where he wishes to continue/resign as director. There after he shall intimate about his choice to concerned companies as well as concerned Registrar.

**Residence of a director in India**

Section 149 (3) of the Act has provided for residence of a director in India as a compulsory i.e. every company shall have at least one director who has stayed in India for a total period of not less than 182 days in the previous calendar year. (Linked to income Tax Act- Residential Status)

**Woman Director**

Every listed company shall appoint at least one woman director within one year from the commencement of the second proviso to Section 149(1) of the Act.

Every other public company having paid up share capital of Rs. 100 crores or more or turnover of Rs. 300 crore or more as on the last date of latest audited financial statements, shall also appoint at least one woman director within 1 years from the commencement of second proviso to Section 149(1) of the Act.

A period of six months from the date of company’s incorporation, has been provided to enable the companies incorporated under Companies Act, 2013 to comply with this requirement. It is better to say that existing companies (under the previous companies act) has to comply the above requirements within one year and new companies (under the new companies act) has to comply within 6 months from the date of its incorporation.

Further if there is any intermittent vacancy of a woman director then it shall be filled up by the board of directors within 3 months from the date of such vacancy or not later than immediate next board meeting, whichever is later.

(Rule 3 of Companies (Appointment and Qualification of Directors) Rules, 2014)

**Independent Directors**

Section 2(47) of the Act prescribed that “Independent director” means an independent director referred to in sub section (5) of section 149 of the Act. In fact reference should have been made to sub section (6) of 149 as it specified the qualifications of independent director with clarity.

Every listed public company shall have at least one-third of the total number of directors as independent directors (fraction is to be rounded off to one). Central Government has prescribed under Rule 4, public companies with specified limits as on the last date of latest audited financial statements mentioned below shall also have at least 2 directors as independent directors:-

- paid up share capital of Rs. 10 crore or more; or
- turnover of Rs. 100 crore or more; or
- in aggregate, outstanding loans/borrowings/ debentures/ deposits/ exceeding Rs. 50 crore or more.
In case a company covered under this rule is required to appoint a higher number of independent directors due to composition of its audit committee and then they shall appoint such a higher number of independent directors.

Further if there is any intermittent vacancy of an independent director then it shall be filled up by the board of directors within 3 months from the date of such vacancy or not later than immediate next board meeting, whichever is later.

**Definition of an Independent Director – Section 149 (6)**

An independent director means a director other than a managing director or a whole-time director or a nominee director who does not have any material or pecuniary relationship with the company/directors. Section 149(6) of the Act prescribes the criteria for independent directors which are as follows:

(a) Who in the opinion of the Board, is a person of integrity and possesses relevant industrial expertise and experience;

(b) Such individual shall not be a promoter or related to promoter of the company or its holding, subsidiary or associate company;

(c) Such individuals must not have any material or pecuniary relationship during the two immediately preceding financial years or during the current financial year with the company or its promoters/directors/holding/subsidiary/associate company;

(d) The relatives of such person should not have had any pecuniary relationship with the company or its subsidiaries, amounting to 2% or more of its gross turnover or total income or Rs. 50 lacs or such higher amount as may be prescribed, whichever is less, during the two immediately preceding financial years or in the current financial year;

(e) He must not either directly or any of his relatives

(i) hold or has held the position of a key managerial personnel or is or has been employee of the company or its holding, subsidiary or associate company in any of the three financial years immediately preceding the financial year in which he is proposed to be appointed.

(ii) is or has been an employee or proprietor or a partner, in any of the three financial years immediately preceding the financial year in which he is proposed to be appointed, of—

(A) a firm of auditors or company secretaries in practice or cost auditors of the company or its holding, subsidiary or associate company; or

(B) any legal or a consulting firm that has or had any transaction with the company, its holding, subsidiary or associate company amounting to ten per cent. or more of the gross turnover of such firm;

(iii) holds together with his relatives two per cent or more of the total voting power of the company; or

(iv) is a Chief Executive or director, by whatever name called, of any non-profit organisation that receives 25% or more of its receipts from the company, any of its promoters, directors or its holding, subsidiary or associate company or that holds 2% or more of the total voting power of the company, then also he is not eligible for office of independent director; or

(f) who possesses such other qualifications as prescribed in Rule 5 as an independent
director shall possess appropriate 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 the company’s business.

**Declaration by an Independent Director- Section 149 (7)**

Section 149 (7) of the Act, prescribed that every independent director shall give a declaration that he meets the criteria of independence when:

(a) he attends the first meeting of the Board as a director;
(b) thereafter at the first meeting of the Board in every financial year and
(c) whenever there is any change in the circumstances which may affect his status as an independent director.

Further "nominee director" means a director nominated by any financial institution in pursuance of the provisions of any law for the time being in force, or of any agreement, or appointed by any Government, or any other person to represent its interests.

**Remuneration of an Independent Director- Section 149(9)**

As per section 149 (9) of the Act an independent director shall not be entitled to any stock option. He may receive remuneration by way of sitting fee, reimbursement of expenses incurred for participation in the Board and other committee meetings and profit related commission as may be approved by the members as provided under section 197 (5) of the Act.

**Appointment of an Independent Director- Section 149(10)**

Subject to the provisions of Section 152, an independent director can be appointed for a term of up to five consecutive years on the Board. However, in case of his reappointment for further five year then special resolution passed in general meeting and disclosure of such appointment is made in the Board’s report shall be required. {Section 149 (10)}

Further independent director can be considered for re-appointment after expiration of three years of ceasing to become an independent director but he must not be appointed/associated with the company directly or indirectly in any other capacity during the said period of three years. Any tenure of an independent director on the date of commencement of this Act is not considered for the above term. {Section 149 (11)}

The provisions of retirement of directors by rotation are not applicable on Independent director. {Section 149 (13)}

**Manner of selection of an Independent Director-Section 150**

According to section 150 (1) of the Act, independent directors may be selected from a data bank of eligible and willing persons maintained by the agency (Any body, institute or association as may be authorised by Central Government). Such agency shall put data bank of independent directors on the website of Ministry of Corporate Affairs or any
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Other notified website. Company must exercise due diligence before selecting a person from the data bank referred to above, as an independent director.

This section further stipulates that the appointment of independent directors has to be approved by members in a General meeting and the explanatory statement annexed to the notice must indicate justification for such appointment.

Director Elected by Small Shareholders - Section 151

According to section 151 of the Act every listed company may have one director elected by such small shareholders. For the purpose of this section, "small shareholder" means a shareholder holding shares of nominal value of not more than twenty thousand rupees or such other sum as may be prescribed.

Appointment of Directors – Section 152

First Director

The first directors of most of the companies are named in their articles. If they are not so named in the articles of a company, then subscribers to the memorandum who are individuals shall be deemed to be the first directors of the company until the directors are duly appointed.

In the case of a One Person Company, an individual being a member shall be deemed to be its first director until the director(s) are duly appointed by the member in accordance with the provisions of Section 152.

At the annual general meeting at which a director retires as aforesaid, the company may fill up the vacancy by appointing the retiring director or some other person thereto. If the vacancy of the retiring director is not so filled-up and the meeting has not expressly resolved not to fill the vacancy, the meeting shall stand adjourned till the same day in the next week, at the same time and place, or if that day is a national holiday, till the next succeeding day which is not a holiday, at the same time and place.

If at the adjourned meeting also, the vacancy of the retiring director is not filled up and that meeting also has not expressly resolved not to fill the vacancy, the retiring director shall be deemed to have been re-appointed at the adjourned meeting, unless—

(i) a resolution for the re-appointment of such director has been put to the meeting and lost;

(ii) the retiring director has expressed his unwillingness to be so re-appointed;

(iii) he is not qualified or is disqualified for appointment;

(iv) a resolution, whether special or ordinary, is required for his appointment or re-appointment by virtue of any provisions of this Act; or

(v) section 162 i.e. appointment of directors to be voted individually is applicable to the case.

Appointment of Additional Director - Section 161 (1)

The board of directors can appoint additional directors, if such power is conferred on
them by the articles of association. Such additional directors hold office only upto the date of next annual general meeting or the last date on which the annual general meeting should have been held, whichever is earlier. A person who fails to get appointed as a director in a general meeting cannot be appointed as Additional Director.

Appointment of Alternate Director- Section 161 (2)

Section 161(2) of the Act allowed the followings:

(i) The Board of Directors of a company must be authorised by its articles or by a resolution passed by the company in general meeting for appointment of alternate director.

(ii) The person in whose place the Alternate Director is being appointed should be absent for a period of not less than 3 months from India.

(iii) The person to be appointed as the Alternate Director shall be the person other than the person holding any alternate directorship for any other Director in the Company.

(iv) If it is proposed to appoint an Alternate Director to an Independent Director, it must be ensured that the proposed appointee also satisfies the criteria for Independent Directors.

(v) An alternate director shall not hold office for a period longer than that permissible to the director in whose place he has been appointed and shall vacate the office if and when the director in whose place he has been appointed returns to India.

(vi) If the term of office of the original director is determined before he so returns to India, any provision for the automatic re-appointment of retiring directors in default of another appointment shall apply to the original, and not to the alternate director.

Appointment of Directors by Nomination Section 161(3)

This new sub-section now provides for appointment of Nominee Directors. It states that subject to the articles of a company, the Board may appoint any person as a director nominated by any institution in pursuance of the provisions of any law for the time being in force or of any agreement or by the Central Government or the State Government by virtue of its shareholding in a Government Company.

Appointment of Directors in causal vacancy- Section 161 (4)

If any vacancy is caused by death or resignation of a director appointed by the shareholders in General meeting, before expiry of his term, the Board of directors can appoint a director to fill up such vacancy. The appointed director shall hold office only up to the term of the director in whose place he is appointed.

Appointment of directors to be voted individually-Section 162(1)

A single resolution shall not be moved for the appointment of two or more persons as directors of the company unless a proposal to move such a motion has first been agreed to at the meeting without any vote being cast against it.

A resolution moved in contravention of aforesaid provision shall be void, whether or not any objection was taken when it was moved. A motion for approving a person for appointment, or for nominating a person for appointment as a director, shall be treated as
a motion for his appointment.

**Proportional representation for appointment of directors- Section 163**

The articles of a company may provide for the appointment of not less than two-thirds of the total number of the directors of a company in accordance with the principle of proportional representation, whether by the single transferable vote or by a system of cumulative voting or otherwise and such appointments may be made once in every three years and casual vacancies of such directors shall be filled as provided in sub-section (4) of section 161.

**Right of persons other than retiring directors to stand for directorship- Section 160**

A person who is not a retiring director shall be eligible for appointment to the office of a director at any general meeting, if he, or some member intending to propose him as a director, has, not less than fourteen days before the meeting, left at the registered office of the company, a notice in writing under his hand signifying his candidature as a director or, as the case may be, the intention of such member to propose him as a candidate for that office, along with the deposit of one lakh rupees or such higher amount as may be prescribed which shall be refunded to such person or, as the case may be, to the member, if the person proposed gets elected as a director or gets more than 25% of total valid votes cast either on show of hands or on poll on such resolution.

**DIRECTOR IDENTIFICATION NUMBER (DIN)**

**General Provisions regarding DIN**

According to Section 155, No individual shall apply for/obtain/ possess another Director Identification Number who has already been allotted a Director Identification Number under section 154.

Section 156 stipulated that Every existing director shall intimate his DIN to the company or all companies wherein he is a director within 1 month of the receipt of DIN from the Central Government.

Section 157 (1) of the Act stipulated that every company shall, within fifteen days of the receipt of intimation under section 156, furnish the DIN of all its directors to the Registrar/authorised office by the Central Government. every such intimation shall be furnished in such form and manner as may be prescribed.

If a company fails to furnish Director Identification Number under section 157 (1), before the expiry of the 270 days period from the date by which it should have been furnished with additional fee, the company shall be punishable with fine which shall not be less than Rs. 25,000 but which may extend to Rs. 1,00,000 and every officer of the company who is in default shall be punishable with fine which shall not be less than Rs. 25,000 but which may extend to Rs. 1,00,000.

Section 158 specified that every person or company shall mention the DIN in return, information or particulars as required to be furnished under this act, in case such return
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etc relate to the director or contain any reference of any director.

**Disqualifications for appointment of director - Section 164**

(1) A person shall not be eligible for appointment as a director of a company, if —

(a) he is of unsound mind and stands so declared by a competent court;
(b) he is an undischarged insolvent;
(c) he has applied to be adjudicated as an insolvent and his application is pending;
(d) he has been convicted by a court of any offence, whether involving moral turpitude or otherwise, and sentenced in respect thereof to imprisonment for not less than six months and a period of five years has not elapsed from the date of expiry of the sentence.

If a person has been convicted of any offence and sentenced in respect thereof to imprisonment for a period of seven years or more, he shall not be eligible to be appointed as a director in any company;

(e) an order disqualifying him for appointment as a director has been passed by a court or Tribunal and the order is in force;
(f) he has not paid any calls in respect of any shares of the company held by him, whether alone or jointly with others, and six months have elapsed from the last day fixed for the payment of the call;
(g) he has been convicted of the offence dealing with related party transactions under section 188 at any time during the last preceding five years; or
(h) he has not got the DIN.

An additional disqualification is provided in sub section (2) of Section 164 relating to consequences of non filing of financial statements or annual returns. Any person who is or has been director of any company which has not filed any financial statements and Annual Return for 3 continuous financial year or has defaulted in payment of debentures/deposit/dividend etc, shall also not be eligible for appointment as director of any public company and for re-appointment in the same company for a period of five years from the date on which the said company fails to do so.

(2) A private company may by its articles provide for any disqualifications for appointment as a director in addition to aforesaid mentioned

Provided that the disqualifications referred to in clauses (d), (e) and (g) of sub-section (1) shall not take effect—

(i) for thirty days from the date of conviction or order of disqualification;
(ii) where an appeal or petition is preferred within thirty days as aforesaid against the conviction resulting in sentence or order, until expiry of seven days from the date on which such appeal or petition is disposed off; or
(iii) where any further appeal or petition is preferred against order or sentence within seven days, until such further appeal or petition is disposed off.

**Duties of directors- Section 166**

For the first time, duties of directors have been defined in the Act. A director of a company shall:
— Act in accordance with the articles of the company.
— 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 interests of the company, its employees, the shareholders, the community and for the protection of environment.
— Exercise his duties with due and reasonable care, skill and diligence and shall exercise independent judgment.
— 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.
— Not achieve or attempt to achieve any undue gain or advantage either to himself or to his relatives, partners, or associates and if such director is found guilty of making any undue gain, he shall be liable to pay an amount equal to that gain to the company.
— Not assign his office and any assignment so made shall be void.

If a director of the company contravenes the provisions of this section such director shall be punishable with fine which shall not be less than Rs. 1,00,000 but which may extend to Rs. 5,00,000.

Vacation of office of director- Section 167

The office of a director shall become vacant in case—

(a) He incurs any of the disqualifications specified in section 164;
(b) He absents himself from all the meetings of the Board of Directors held during a period of twelve months with or without seeking leave of absence of the Board;
(c) He acts in contravention of the provisions of section 184 relating to entering into contracts or arrangements in which he is directly or indirectly interested;
(d) He fails to disclose his interest in any contract or arrangement in which he is directly or indirectly interested;
(e) He becomes disqualified by an order of a court or the Tribunal;
(f) He is convicted by a court of any offence, whether involving moral turpitude or otherwise and sentenced in respect thereof to imprisonment for not less than 6 months;  
Provided that the office shall be vacated by the director even if he has filed an appeal against the order of such court;
(g) He is removed in pursuance of the provisions of this Act;
(h) He, having been appointed a director by virtue of his holding any office or other employment in the holding, subsidiary or associate company, ceases to hold such office or other employment in that company.

If a person, functions as a director even when he knows that the office of director held by him has become vacant on account of any of the disqualifications specified above, he shall be punishable with imprisonment for a term which may extend to 1 year or
with fine which shall not be less than Rs. 1,00,000 but which may extend to Rs. 5,00,000 or with both.

Where all the directors of a company vacate their offices under any of the disqualifications specified above the promoter or, in his absence, the Central Government shall appoint the required number of directors who shall hold office till the directors are appointed by the company in the general meeting.

A private company may, by its articles, provide any other ground for the vacation of the office of a director in addition to those specified above.

**Resignation of director- Section 168 & Rule 15, 16**

A director may resign from his office by giving notice in writing. The Board shall, on receipt of such notice within 30 days intimate the Registrar in Form DIR-12 and also place the fact of such resignation in the Directors’ Report of subsequent general meeting of the company and post the information on its website. The director shall also forward a copy of resignation alongwith detailed reasons for the resignation to the Registrar in Form DIR-11 within 30 days from the date of resignation. The notice shall become effective from the date on which the notice is received by the company or the date, if any, specified by the director in the notice, whichever is later. Provided that the director who has resigned shall be liable even after his resignation for the offences which occurred during his tenure.

If all the directors of a company resign from their office or vacate their office, the promoter or in his absence the Central Government shall appoint the required number of directors to hold office till the directors are appointed by the company in General Meeting.

**Removal of directors- Section 169**

A company may, remove a director except the director appointed by National Company Law Tribunal u/s 242, before the expiry of the period of his office after giving him a reasonable opportunity of being heard after passing the ordinary resolution.

Provided that nothing contained in this sub-section shall apply where the company has availed itself of the option given to it under section 163 to appoint not less than two thirds of the total number of directors according to the principle of proportional representation.

A special notice shall be required of any resolution, to remove a director under this section, or to appoint somebody in place of a director so removed, at the meeting at which he is removed.

On receipt of notice of a resolution to remove a director under this section, the company shall forthwith send a copy thereof to the director concerned, and the director, whether or not he is a member of the company, shall be entitled to be heard on the resolution at the meeting.

Where notice has been given of a resolution to remove a director under this section and the director concerned makes with respect thereto representation in writing to the company and requests its notification to members of the company, the company
shall, if the time permits it to do so,—

(a) in any notice of the resolution given to members of the company, state the fact of the representation having been made; and

(b) send a copy of the representation to every member of the company to whom notice of the meeting is sent (whether before or after receipt of the representation by the company), and if a copy of the representation is not sent as aforesaid due to insufficient time or for the company’s default, the director may without prejudice to his right to be heard orally require that the representation shall be read out at the meeting.

Provided that copy of the representation need not be sent out and the representation need not be read out at the meeting if, on the application either of the company or of any other person who claims to be aggrieved, the Tribunal is satisfied that the rights conferred by this sub-section are being abused to secure needless publicity for defamatory matter; and the Tribunal may order the company’s costs on the application to be paid in whole or in part by the director notwithstanding that he is not a party to it.

A vacancy created by the removal of a director under this section may, if he had been appointed by the company in general meeting or by the Board, be filled by the appointment of another director in his place at the meeting at which he is removed, provided special notice of the intended appointment has been given under sub-section (2).

A director so appointed shall hold office till the date up to which his predecessor would have held office if he had not been removed.

If the vacancy is not filled under sub-section (5), it may be filled as a casual vacancy in accordance with the provisions of this Act:

Provided that the director who was removed from office shall not be re-appointed as a director by the Board of Directors.

Nothing in this section shall be taken—

(a) as depriving a person removed under this section of any compensation or damages payable to him in respect of the termination of his appointment as director as per the terms of contract or terms of his appointment as director, or of any other appointment terminating with that as director; or

(b) as derogating from any power to remove a director under other provisions of this Act.

Register of Key Managerial Personnel– Section 170 (1) & Rule 17

Every company shall keep at its registered office a register of its directors and key managerial personnel containing certain particulars.

In addition to the details of the directors or key managerial personnel, the company shall also include in the aforesaid Register the details of securities held by them in the company, its holding company, subsidiaries, subsidiaries of the company’s holding
company and associate companies.

Return of Key Managerial Personnel- Section 170(2) & Rule 18

A return containing the particulars of appointment of director or key managerial personnel and changes therein, shall be filed with the Registrar in Form DIR-12 within 30 days of such appointment or change, as the case may be.

Members’ right to inspect- Section 171

The register of Key Managerial Personnel kept u/s 170(1) shall be open for inspection during business hours. The members shall have a right to take extracts therefrom and copies thereof, on a request by the members, be provided to them free of cost within thirty days; and it shall also be kept open for inspection at every AGM so that any person attending the meeting can access the register.

If any inspection as provided above is refused, or if any copy required under that clause is not sent within thirty days from the date of receipt of such request, the Registrar shall on an application made to him order immediate inspection and supply of copies required thereunder.

Punishment- Section 172

If a company contravenes any of the provisions of this Chapter and for which no specific punishment is provided therein, the company and every officer of the company who is in default shall be punishable with fine which shall not be less than Rs. 50,000 but which may extend to Rs. 5,00,000.
CHAPTER - IX

MEETING OF BOARD AND ITS POWERS
MEETINGS OF BOARD AND ITS POWRS

Meetings of the Board : Section 173

Section 173 of the Act deals with Meetings of the Board and Section 174 deals with quorum.

1. The Act provides that the first Board meeting should be held within **thirty days of the date of incorporation**.

2. In addition to the first meeting to be held within thirty days of the date of incorporation, there shall be **minimum of four Board meetings every year** and not more **one hundred and twenty days** shall intervene between two consecutive Board meetings.

3. In case of One Person Company (OPC), small company and dormant company, at least one Board meeting should be conducted in each half of the calendar year and the gap between two meetings should **not be less than Ninety days**.

Notice of Board Meetings

1. The Act requires that not less than seven days’ notice in writing shall be given to every director at the registered address as available with the company. The notice can be given by hand delivery or by post or by electronic means.

2. In case the Board meeting is called at shorter notice, at least one independent director shall be present at the meeting. If he is not present, then decision of the meeting shall be circulated to all directors and it shall be final only after ratification of decision by at least one Independent Director.

Requirements and Procedures for Convening and Conducting Board’s Meetings

Directors may participate in the meeting either in person or through video conferencing or other audio visual means.

Rule 3 of the Companies (Meetings of Board and its Powers) Rules, 2014 provides for the requirements and procedures, in addition to the procedures required for Board meetings in person, for convening and conducting Board meetings through video conferencing or other audio visual means.

Matters not to be dealt with in a Meeting through Video Conferencing or other Audio Visual Means

Rule 4 prescribe restriction on following matters which shall not be dealt with in any meeting held through video conferencing or other audio visual means:

(i) the approval of the annual financial statements; (ii) the approval of the Board’s report; (iii) the approval of the prospectus; (iv) the Audit Committee Meetings for
consideration of accounts; and (v) the approval of the matter relating to amalgamation, merger, demerger, acquisition and takeover.

Penalty

Every officer of the company who is duty bound to give notice under this section if fails to do so shall be liable to a penalty of twenty five thousand rupees (Rs 25000).

Compliance with Secretarial Standards relating to Board Meetings

For the first time in the history of Company Law in India, the Companies Act, 2013 has given statutory recognition to the Secretarial Standards issued by the Institute of Company Secretaries of India.

Section 118(10) of the Act reads as under:

Every company shall observe secretarial standards with respect to general and Board meetings specified by the Institute of Company Secretaries of India constituted under section 3 of the Company Secretaries Act, 1980, and approved as such by the Central Government.

Quorum for Board Meetings: Section 174

One third of total strength or two directors, whichever is higher, shall be the quorum for a meeting.

If due to resignations or removal of director(s), the number of directors of the company is reduced below the quorum as fixed by the Articles of Association of the company, then, the continuing Directors may act for the purpose of increasing the number of Directors to that required for the quorum or for summoning a general meeting of the Company. It shall not act for any other purpose.

For the purpose of determining the quorum, the participation by a director through Video Conferencing or other audio visual means shall also be counted.

If at any time the number of interested directors exceeds or is equal to two-thirds of the total strength of the Board of directors, the number of directors who are not interested and present at the meeting, being not less than two shall be the quorum during such time.

The meeting shall be adjourned due to want of quorum, unless the articles provide shall be held to the same day at the same time and place in the next week or if the day is National Holiday, the next working day at the same time and place.

Passing of Resolution by Circulation: Section 175

A company may pass the resolutions through circulation. The resolution in draft form together with the necessary papers may be circulated to the directors or members of committee at their address registered with the company in India or through electronic means which may include e-mail or fax.

The said resolution must be passed by majority of directors or members entitled to vote.
If more than one third of directors require that the resolution must be decided at the meeting, the chairperson shall put the resolution to be decided at the meeting.

The resolution passed through circulation be noted at a subsequent meeting and made part of the minutes of such meeting.

**Defects in Appointment of Directors not to Invalidate Actions Taken: Section 176**

All acts done by directors shall be valid notwithstanding that it is subsequently noticed that his appointment was invalid by reason of any defect or disqualifications or had terminated by virtue of the provisions of Companies Act or the articles of the company.

But this section doesn’t give validity to any act done by directors whose appointment has been notices to be invalid or to have terminated.

### BOARD COMMITTEES

**Background**

Corporate boards usually consist of the following minimal standing committees: (1) audit, (2) compensation, (3) executive, and (4) governance and nominating. Sometimes, committee names might differ slightly (i.e., the compensation committee may be known as the compensation and benefits committee or the governance and nominating committee may be referred to as the nominating committee).

**Audit Committee**

In the wake of various corporate scandals, both in India and elsewhere, audit committee members are subject to enhanced responsibilities and liabilities. Regulators are conducting more investigations of the actions of directors and officers. Nevertheless, serving as an audit committee member can be a rewarding experience and provides an opportunity to make a difference for a public company, its shareholders, and the investing public.

At the core of the financial reporting process is the audit committee of the company’s board of directors. Audit Committee is now the gatekeeper of financial information that shareholders and the investing public rely upon in order to make informed investment decisions.

**Section 177: Audit Committee**

The Act has enlarged the responsibilities of auditors to include monitoring of auditors' independence, evaluation of their performance, approval of modification of related-party transactions, scrutiny of loans and investments, valuation of assets and evaluation of internal controls and risk management. They have to establish a vigil mechanism and protection for any whistle-blower. The members must be able to understand financial statements and have a majority of Independent Directors. Large companies must mandatorily have professional internal auditors.

1. The requirement of constitution of Audit Committee has been limited to:

   (a) Every listed Companies; or
(b) The following class of companies –

(i) all public companies with a paid up capital of ten crore rupees or more;

(ii) all public companies having turnover of one hundred crore rupees or more;

(iii) all public companies, having in aggregate, outstanding loans or borrowings or debentures or deposits exceeding fifty crore rupees or more.

Explanation - The paid up share capital or turnover or outstanding loans, or borrowings or debentures or deposits, as the case may be, as existing on the date of last audited Financial Statements shall be taken into account for the purposes of this rule.

2. The Committee shall comprise of minimum 3 directors with majority of the directors being Independent Directors. The majority of members of audit committee including its chairperson shall be person with ability to read and understand the financial statement.

3. A transition period of one year from the date on which the new Act comes into effect has been provided to enable companies to reconstitute the Audit Committee.

4. The Audit Committee may call for the comments of the auditors about internal control systems, the scope of audit, including the observations of the auditors and review of financial statement before their submission to the Board and may also discuss any related issues with the internal and statutory auditors and the management of the company.

5. The audit committee hold the authority to investigate into matters or referred by the Board and have the powers to obtain professional advice from external sources and have full access to records of the company.

6. In addition to the auditor, the KMP shall also have a right to be heard in the meetings of the Audit Committee when it considers the auditor's report, though they shall not have voting rights.

7. Every listed company and the companies belonging to the following class or classes shall establish a vigil mechanism for their directors and employees to report genuine concerns or grievances (Rule 7):

(1) The companies which accept deposits from the public;

(2) The companies which have borrowed money from banks and public financial institutions in excess of fifty crore rupees.

Audit Committee under Listing Agreement

In case of Listed Companies, their compliance shall be in accordance with the Corporate Governance provisions enshrined in Clause 49 of the Listing Agreement.

The provisions relating to Audit Committee as contained in the recently amended Clause 49 of the Listing Agreement which will take October 1, 2014 reads as under:

A qualified and independent audit committee shall be set up, giving the terms of reference subject to the following:

(i) The audit committee shall have minimum three directors as members. Two-thirds of
the members of audit committee shall be independent directors;
(ii) All members of audit committee shall be financially literate and at least one member shall have accounting or related financial management expertise;
(iii) The Chairman of the Audit Committee shall be an independent director;
(iv) The Chairman of the Audit Committee shall be present at Annual General Meeting to answer shareholder queries;
(v) The audit committee may invite such of the executives, as it considers appropriate (and particularly the head of the finance function) to be present at the meetings of the committee, but on occasions it may also meet without the presence of any executives of the company;
The finance director, head of internal audit and a representative of the statutory auditor may be present as invitees for the meetings of the audit committee;
(vi) The Company Secretary shall act as the secretary to the committee.

Meeting of Audit Committee

The audit committee should meet at least four times in a year and not more than four months shall elapse between two meetings. The quorum shall be either two members or one third of the members of the audit committee whichever is greater, but there should be a minimum of two independent members present.

Thus, it can be observed that the role of Audit Committee in listed companies will be governed both by the provisions of the Listing Agreement and the revised Section 177 of the Companies Act, 2013.

SECTION 178: Nomination and Remuneration Committee and Stakeholders Relationship Committee

The Nomination and Remuneration Committee helps the Board of Directors in the preparations relating to the election of members of the Board of Directors, and in handling matters within its scope of responsibility that relate to the conditions of employment and remuneration of senior management, and to management’s and personnel’s remuneration and incentive schemes. The responsibilities of the Remuneration and Nomination Committee are defined in its policy document.

Except for certain large listed companies, the importance of constitution of the Nomination and Remuneration Committee has not been realised fully in India.

The Board of directors of following companies shall constitute Nomination and Remuneration Committee of the Board:
(a) Every listed Companies; or
(b) The following class of companies –
   (i) all public companies with a paid up capital of ten crore rupees or more;
   (ii) all public companies having turnover of one hundred crore rupees or more;
   (iii) all public companies, having in aggregate, outstanding loans or borrowings or debentures or deposits exceeding fifty crore rupees or more.

The committee shall consist of three or more non-executive directors out of which not less
than one-half shall be independent directors.

The chairperson of the company may be appointed as member, but shall not chair such committee.

The Stakeholders Relationship Committee

Section 178(5) of the Companies Act, 2013 provides for constitution of the Stakeholders Relationship Committee.

The Board of a company that has more than one thousand shareholders, debenture-holders, deposit-holders and any other security holders at any time during a financial year is required to constitute a Stakeholders Relationship Committee consisting of a chairperson who shall be a non-executive director and such other members as may be decided by the Board.

The Stakeholders Relationship Committee shall consider and resolve the grievances of security holders of the company.

Who can attend the general meeting of the company on behalf of committee constituted under this section?

The chairperson of each of the committees constituted under this section or, in his absence, any other member of the committee authorised by him in this behalf shall attend the general meetings of the company.

Penalty for Contravention

The company shall be punishable with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees. Every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to one year or with fine not less than rupees twenty five thousand but which may extend to one lakh rupees or with both.

Corporate Social Responsibility Committee

The evolution of corporate social responsibility in India refers to changes over time in India of the cultural norms of companies engagement of Corporate Social Responsibility (CSR), with CSR referring to way that businesses are managed to bring about an overall positive impact on the communities, cultures, societies and environments in which they operate.

One of the key changes in the Companies Act, 2013 is the introduction of a Corporate Social Responsibility section making India the first country to mandate CSR through a statutory provision. While CSR is not mandatory for companies, the rules are in line with the ‘Comply or Explain’ principle with penalties applicable only if an explanation is not offered.

The provisions of the Section may be summarized as under:

1. The Section applies to the following classes of companies during any financial year:

   (i) Companies having Net Worth of rupees five hundred crore or more;

   (ii) Companies having turnover of rupees one thousand crore or more;

   (iii) Companies having Net Profit of rupees five crore or more
2. The companies specified above shall constitute a Corporate Social Responsibility Committee (CSR Committee) of the Board.

3. The CSR Committee shall consist of three or more Directors, out of which at least one Director shall be an Independent Director.

4. After taking into account the recommendations of the CSR Committee, the Board shall approve the CSR Policy for the company.

5. The contents of the Policy shall be disclosed in the Board's report.

6. It shall also be placed on the Company’s website, if any, in a manner to be prescribed by the Central Government.

7. The Board shall ensure that the activities as are included in the CSR Policy (from the activities as specified in Schedule VII) are undertaken by the Company.

The following additional features of the Section are relevant:

1. While spending the amount earmarked for CSR activities, the company shall give preference to the local area and areas around it where it operates;

2. If the Company fails to spend the amount, the Board shall specify the reasons for not spending the amount in the Board’s Report.

3. The eligible companies are required to spend in every financial year, at least two per cent of the Average Net Profits of the Company made during the three immediately preceding financial years in pursuance of its CSR Policy. For this purpose, “Average Net Profit” shall be calculated in accordance with the provisions of Section 198 of the Companies Act, 2013.

Other Board Committees

In addition to the Committees of the Board mandated by the Companies Act, 2013 viz, Audit Committee, Nomination and Remuneration Committee, Stakeholders Relationship Committee and the CSR Committee, Board of Directors may also constitute other Committees to oversee a specific objective or project. The nomenclature, composition and role of such Committees will vary, depending upon the specific objectives of the company.

Power of Board: Section 179

Section 179 of the Act deals with the powers of the board; all powers to do such acts and things for which the company is authorised is vested with board of directors. But the board can act or do the things for which powers are vested with them and not with general meeting.

The following (section 179(3) and Rule 8) powers of the Board of directors shall be exercised only by means of resolutions passed at meetings of the Board, namely :-

(1) to make calls on shareholders in respect of money unpaid on their shares;
(2) to authorise buy-back of securities under section 68;
(3) to issue securities, including debentures, whether in or outside India;
(4) to borrow monies;
(5) to invest the funds of the company;
(6) to grant loans or give guarantee or provide security in respect of loans;
(7) to approve financial statement and the Board’s report; (8) to diversify the business of the company;
(9) to approve amalgamation, merger or reconstruction;
(10) to take over a company or acquire a controlling or substantial stake in another company;
(11) to make political contributions;
(12) to appoint or remove key managerial personnel (KMP);
(13) to approve amalgamation, merger or reconstruction;
(14) to make political contributions;
(15) to appoint or remove key managerial personnel (KMP);
(16) to diversify the business of the company;
(17) to take note of appointment(s) or removal(s) of one level below the Key Management Personnel;
(18) to take note of the disclosure of director’s interest and shareholding;
(19) to take note of appointment(s) or removal(s) of one level below the Key Management Personnel;
(20) to appoint internal auditors and secretarial auditor;
(21) to take note of the disclosure of director’s interest and shareholding;
(22) to borrow money, where the money to be borrowed, together with the money already borrowed by the company will exceed aggregate of its paid-up share capital and free reserves, apart from temporary loans obtained from the company’s bankers in the ordinary course of business;
(23) to remit, or give time for the repayment of, any debt due from a director.

The Board may, by a resolution passed at a meeting, delegate to any committee of directors, the managing director, the manager or any other principal officer of the company or in the case of a branch office of the company, the principal officer of the branch office, the powers specified in (4) to (6) above on such conditions as it may specify.

The banking company is not covered under the purview of this section. The company may impose restriction and conditions on the powers of the Board.

SECTION 180 : Restriction on Powers of Board

The board can exercise the following powers only with the consent of the company by special resolution, namely –

(a) to sell, lease or otherwise dispose of the whole or substantially the whole of the undertaking of the company or where the company owns more than one undertaking, of the whole or substantially the whole of any of such undertakings.

(b) to invest otherwise in trust securities the amount of compensation received by it as a result of any merger or amalgamation;

(c) to borrow money, where the money to be borrowed, together with the money already borrowed by the company will exceed aggregate of its paid-up share capital and free reserves, apart from temporary loans obtained from the company’s bankers in the ordinary course of business;

(d) to remit, or give time for the repayment of, any debt due from a director.

The special resolution relating to borrowing money exceeding paid up capital and free
reserves specify the total amount up to which the money may be borrowed by Board.

The title of buyer or the person who takes on lease any property, investment or undertaking on good faith cannot be affected and also in case if such sale or lease covered in the ordinary business of such company.

The resolution may also stipulate the conditions of such sale and lease, but this doesn’t authorise the company to reduce its capital except the provisions contained in this Act.

The debt incurred by the company exceeding the paid up capital and free reserves is not valid and effectual, unless the lender proves that the loan was advanced on good faith and also having no knowledge of limit imposed had been exceeded.

SECTION 181 : Contributions to Charitable Funds and Political Parties

The power of making contribution to ‘bona fide’ charitable and other funds is available to the board subject to certain limits.

Further, the permission of company in general meeting is required if such contribution exceeds five percent of its average net profits for the three immediately preceding previous years.

SECTION 182 : Prohibitions and Restrictions Regarding Political Contributions

The non-government company or the company which has been in existence more than three financial years may contribute any amount directly or indirectly to any political party.

Further, the limit of contribution to political parties is 7.5% of the average net profits during the three immediately preceding financial years.

The contribution must be authorised by board in its meeting by resolution and such resolution deemed to be the justification in law for such contribution.

The donation may be directly or indirectly. The contribution so made if or likely to affect the public support for a political party deemed to be the contribution for political purpose.

If the expenditure incurred on advertisement in any publication i.e. souvenir, brochure, tract, pamphlet or the like is deemed as political contribution if such publication is by or on behalf of political party or if not, then for the advantage to such political party for a political purpose.

The company is required to disclose in its profit and loss account any amount or amounts contributed by it to any political party during the financial year and the particular of total amount contributed and the name of political party to whom the contribution so made.

**Penalty for Contravention**

The contribution in contravention of the provisions of this section, the company shall be punishable for an amount which may extend to five times of the amount so contributed and every officer who is in default shall be punishable with imprisonment for a term which
may extend to six months and with fine which may extend to five times of the amount so contributed.

**Section 183 : Power of Board and other Persons to make Contributions to National Defence Fund, etc.**

The Board is authorised to contribute such amount as it thinks fit to the National Defence Fund or any other fund approved by the Government for the purpose of national defence.

The company is required to disclose in its profit and loss account the total amount or amounts contributed by it during the financial year.

**Section 184 : Disclosure of Interest by Director**

The Act provides for the disclosure by directors relating his concern or interest in any company or companies or body corporate (including shareholding interest), firms or other association of individuals by giving a notice in writing in form MBP 1 (Rule 9(1)) at the first meeting of board after being appointed as director and at first meeting of board of every financial year, in addition to this, any change required to be disclosed in next board meeting.

Every director is required to disclose the nature of his concern or interest at the meeting of board in which the contract or arrangement is discussed and he has not to participate in such meeting.

The abovementioned interest may be direct or indirect and relating to some contract or arrangement or proposed contract or arrangement entered into or to be entered into with a body corporate in which such director or such director in association with other director holds more than two percent shareholding or is a promoter, manager, Chief Executive Officer of that body corporate or with a firm or other entity in which such director is a partner, owner or member as the case maybe.

It shall be the duty of the director giving notice of interest to cause it to be disclosed at the meeting held immediately after the date of the notice. (Rule 9(2))

If a director is not concerned or interested at the time of contract but, subsequently becomes concerned or interested is required to disclose his interest or concern at the first meeting of the board.

All notices shall be kept at the registered office and such notices shall be preserved for a period of eight years from the end of the financial year to which it relates and shall be kept in the custody of the company secretary of the company or any other person authorized by the Board for the purpose. (Rule 9(3))

If a contract or arrangement entered into by the company without disclosure of interest by director or with participation by a director who is concerned or interested in any way, directly or indirectly, in the contract or arrangement, shall be voidable at the option of the company.

The contravention of the provisions leads to punishment for a term which may extend to one year or with fine which shall not be less than fifty thousand rupees but which may extend to one lakh rupees or both.
Any contract or arrangement entered into or to be entered into between two companies, where any director of any company holds more than two percent of the paid up capital in other company, the provisions of this section shall not apply.

**Section 185: Loans to Directors, etc.**

No company shall directly or indirectly advance any loan to any of its directors or to any person in whom director is interested or give any guarantee or provide any security in connection with any loan taken by him or such other person.

But a company may advance loan to managing or whole-time director as part of the conditions of service extended by the company to all its employees or pursuant to any scheme approved by the members by a special resolution or the company provides loans or gives guarantee or securities for the due repayment of any loan in due course of its business.

Rule 10 provides that any loan made by a holding company to its wholly owned subsidiary company or any guarantee given or security provided by a holding company in respect of any loan made to its wholly owned subsidiary company is exempted from the requirements under this section and any guarantee given or security provided by a holding company in respect of loan made by any bank or financial institution to its subsidiary company is exempted from the requirements under this section; provided that such loans are utilised by the subsidiary company for its principle business activities.

**Penalty**

The contravention of provisions of this section leads to punishment with fine which shall not be less than five lakh rupees but which may extend to twenty five lakh rupees. The director or to whom loan or advance is given or guarantee or security is given or provided shall be imprisoned which may extend to six months or with fine mentioned above or with both.

**Section 186: Loan and Investment by a Company**

Companies can make investments only through two layers of investment companies subject to exceptions which includes company incorporated outside India.

A company can’t directly or indirectly give any loan to any person or other body corporate; give any guarantee or provide security in connection with a loan to any other body corporate or person; and acquire by way of subscription, purchase or otherwise, the securities of any other body corporate, exceeding sixty percent of its paid-up share capital, free reserves and securities premium account or one hundred percent of its free reserves and securities premium account, whichever is more.

If the loan exceeding the limits, prior approval of the company in general meeting is necessary and it shall be through special resolution. The prior approval of company is not necessary in case the company is disclosing the details of such loans or guarantee or security or acquisition in the financial statement. (Rule 11(1))

The company is required to disclose in its financial statement the full particular of loans given, investment made or guarantee given or security provided with its purpose.

The decision of board should be unanimous and the prior approval of public financial institution is to be obtained if exceeds the limit and company is not in default in
repayment of loan instalment or interest thereon.

No company registered under section 12 of the Securities and Exchange Board of India Act, 1992 and also covered under such class or classes of companies which may be notified by the Central Government in consultation with the Securities and Exchange Board, shall take any inter-corporate loan or deposits, in excess of the limits specified under the regulations applicable to such company, pursuant to which it has obtained certificate of registration from the Securities and Exchange Board of India. (Rule 11.3)

No loan shall be given under this section at a rate of interest lower than the prevailing yield of one year, three year, five year or ten year Government Security closest to the tenor of the loan.

A company who is in default in the repayment of any deposits accepted can't give any loan or give any guarantee or provide any security or make an acquisition till such default is subsisting.

Maintenance of Register (Rule 12)

Every company giving loan or giving guarantee or providing security or making an acquisition of securities shall, from the date of its incorporation, maintain a register in Form MBP 2 and enter therein separately, the particulars of loans and guarantees given, securities provided and acquisitions made as aforesaid.

The entries in the register shall be made chronologically in respect of each such transaction within seven days of making such loan or giving guarantee or providing security or making acquisition.

The register shall be kept at the registered office of the company and the register shall be preserved permanently and shall be kept in the custody of the company secretary of the company or any other person authorised by the Board for the purpose.

The entries in the register (either manual or electronic) shall be authenticated by the company secretary of the company or by any other person authorized by the Board for the purpose. A register can be maintained either manually or in electronic mode.

The extract from the register may be furnished to any member of the company on payment of fee as may be prescribed in the Articles of the company which shall not exceed ten rupees for each page.

Special Resolution (Rule 13)

Where the aggregate of the loans and investment so far made, the amount for which guarantee or security so far provided to or in all other bodies corporate along with the investment, loan, guarantee or security proposed to be made or given by the Board, exceed the limits specified under section 186 no investment or loan shall be made or guarantee shall be given or security shall be provided unless previously authorised by a special resolution passed in a general meeting.

A resolution passed at a general meeting in terms of sub-section (3) of section 186 to give any loan or guarantee or investment or providing any security or the acquisition under sub section (2) of section 186 shall specify the total amount up to which the Board of Directors are authorised to give such loan or guarantee, to
provide such security or make such acquisition:

Provided, that the company shall disclose to the members in the financial statement the full particulars in accordance with the provision of sub-section (4) of section 186.

**Penalty**

The contravention of the provisions of this section imposes punishment for the company with fine which shall not be less than twenty five thousand rupees but may extend to five lakh rupees.

Every officer of company in default shall be punishable with imprisonment for term which may extend to two years and with fine not less than twenty five thousand rupees but which may extend to five lakh rupees.

**Section 187: Investments of Company to be held in its Own Name**

All investment made or held by a company in a property, security or other asset must be made and held by it in its own name.

The company may hold any shares in its subsidiary company in the name of any nominee or nominees of the company, if it is necessary to do so, to ensure that the number of members of the subsidiary company is not reduced below the statutory limit.

**Exceptions**

A company may deposit with a bank, being the bankers of the company, any shares or securities for the collection of any dividend or interest payable thereon; or

A company may deposit with, or transferring to, or holding in the name of, the State Bank of India or a scheduled bank, being the bankers of the company, shares or securities, in order to facilitate the transfer thereof, but required to again hold the shares or securities in its own name within a period of six months;

A company may deposit with, or transferring to, any person any shares or securities, by way of security for the repayment of any loan advanced to the company or the performance of any obligation undertaken by it;

A company may hold investments in the name of a depository when such investments are in the form of securities held by the company as a beneficial owner.

**Maintenance of Register (Rule 14)**

Every company shall, from the date of its registration, maintain a register in **Form MBP 3** and enter therein, chronologically, the particulars of investments in shares or other securities beneficially held by the company but which are not held in its own name and the company shall also record the reasons for not holding the investments in its own name and the relationship or contract under which the investment is held in the name of any other person.

Further, the company shall also record whether such investments are held in a third party’s name for the time being or otherwise.

The register shall be maintained at the registered office of the company. The register shall be preserved permanently and shall be kept in the custody of the company
secretary of the company or if there is no company secretary, any director or any other officer authorised by the Board for the purpose.

Entries in the register shall be authenticated by the company secretary of the company or by any other person authorized by the Board for the purpose.

The said register shall be open to inspection by any member or debenture-holder of the company without any charge during business hours subject to such reasonable restrictions as the company may by its articles or in general meeting impose.

**Penalty**

In case of contravention of this section, the company shall be punishable with fine which shall not be less than twenty-five thousand rupees but which may extend to twenty-five lakh rupees and every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to six months or with fine which shall not be less than twenty-five thousand rupees.

### Section 188: Related Party Transactions

**Related Party**

With reference to company, the term ‘related party’ means and includes the following:

- a director or his relative,
- KMP or their relative,
- a firm in which a director manager or his relative is a partner,
- a private company in which a director or manager is a director or holds along with his relatives, more than 2% of its paid-up share capital,
- a person on whose advice, directions or instruction (except given in professional capacity) a director or manager is accustomed to act,
- a holding/ subsidiary or associate company, subsidiary’s subsidiary, and such person as would be prescribed.

**Nature of Transactions**

The scope of dealing with Related Party Transactions has been widened in Companies Act, 2013. The contracts or arrangements with related party which comes with respect to the following shall be covered under the scope of this provision:

- (a) sale, purchase or supply of any goods or materials;
- (b) selling or otherwise disposing of, or buying, property of any kind;
- (c) leasing of property of any kind;
- (d) availing or rendering of any services;
- (e) appointment of any agent for purchase or sale of goods, materials, services or property;
- (f) such related party’s appointment to any office or place of profit in the company, its subsidiary company or associate company; and
(g) underwriting the subscription of any securities or derivatives thereof, of the company.

However, nature of transactions covered are comprehensive as they include routine to rare supply of goods or material either by way of direct sale, purchase or supply of any goods or services (technical support, maintenance, consultancy, advisory, leasing of property or sharing professional knowledge etc.) or by appointing agent for the same and underwriting financial instruments of the Company. While entering into such type of transactions, Company will be required to take prior approval of Board of Directors, by way of a resolution passed in the board meeting.

The transactions done in ordinary course of business on arm length's basis shall be outside the scope of this provision.

**Entering into Contract or Arrangement with Related Party**

A company shall enter into any contract or arrangement with a related party subject to the following (Rule 15) conditions –

1. The agenda of the Board meeting at which the resolution is proposed to be moved shall disclose-
   a. the name of the related party and nature of relationship;
   b. the nature, duration of the contract and particulars of the contract or arrangement;
   c. the material terms of the contract or arrangement including the value, if any;
   d. any advance paid or received for the contract or arrangement, if any;
   e. the manner of determining the pricing and other commercial terms, both included as part of contract and not considered as part of the contract;
   f. whether all factors relevant to the contract have been considered, if not, the details of factors not considered with the rationale for not considering those factors; and
   g. any other information relevant or important for the Board to take a decision on the proposed transaction.

2. Where any director is interested in any contract or arrangement with a related party, such director shall not be present at the meeting during discussions on the subject matter of the resolution relating to such contract or arrangement.

3. For the purposes of first proviso to sub-section (1) of section 188, except with the prior approval of the company by a special resolution –

   a. company having a paid-up share capital of ten crore rupees or more shall not enter into a contract or arrangement with any related party; or
   ii. a company shall not enter into a transaction or transactions, where the transaction or transactions to be entered into –

   (a) as contracts or arrangements with respect to clauses (a) to (e) of sub-section (1) of section 188 with criteria, as mentioned below –

   (i) sale, purchase or supply of any goods or materials directly or through appointment of agents exceeding twenty five percent. of the annual turnover as mentioned in clause (a) and clause (e) respectively of sub-section (1) of section 188;
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(ii) selling or otherwise disposing of, or buying, property of any kind directly or through appointment of agents exceeding ten percent. of net worth as mentioned in clause (b) and clause (e) respectively of sub-section (1) of section 188;

(iii) leasing of property of any kind exceeding ten percent. of the net worth or exceeding ten percent. of turnover as mentioned in clause (c) of sub-section (1) of section 188;

(iv) availing or rendering of any services directly or through appointment of agents exceeding ten percent. of the net worth as mentioned in clause (d) and clause (e) of sub-section (1) of section 188;

(b) appointment to any office or place of profit in the company, its subsidiary company or associate company at a monthly remuneration exceeding two and half lakh rupees as mentioned in clause (f) of sub-section (1) of section 188; or (c) remuneration for underwriting the subscription of any securities or derivatives thereof of the company exceeding one percent. of the net worth as mentioned in clause (g) of sub-section (1) of section 188.

(2) In case of wholly owned subsidiary, the special resolution passed by the holding company shall be sufficient for the purpose of entering into the transactions between wholly owned subsidiary and holding company.

(3) The explanatory statement to be annexed to the notice of a general meeting convened pursuant to section 101 shall contain the following particulars namely:

(a) name of the related party;

(b) name of the director or key managerial personnel who is related, if any;

(c) nature of relationship;

(d) nature, material terms, monetary value and particulars of the contract or arrangement;

(e) any other information relevant or important for the members to take a decision on the proposed resolution.

Criteria for prior Approval of Company through Special Resolution

The company shall enter in to related party transaction only by prior approval of the company by way of special resolution in general meeting, in following:

(i) a company having a paid-up share capital of rupees one crore or more shall not enter into a contract or arrangement with any related party; or

(ii) a company shall not enter into a transaction or transactions, where the transaction or transactions to be entered into

(a) individually or taken together with previous transactions during a financial year, exceeds five percent of the annual turnover or twenty percent of the net worth of the company as per the last audited financial statements of the company, whichever is higher, for contracts or arrangements as mentioned in clauses (a) to (e) of sub-section (1) of section 188; or
(b) relates to appointment to any office or place of profit in the company, its subsidiary company or associate company at a monthly remuneration exceeding one lakh rupees as mentioned in clause (f) of sub-section (1) of section 188; or
(c) is for a remuneration for underwriting the subscription of any securities or derivatives thereof of the company exceeding ten lakh rupees as mentioned in clause (g) of sub-section (1) of section 188;
except with the prior approval of the company by a special resolution.

For the purposes of second proviso to sub-section (1) of section 188, in case of wholly owned subsidiary, the special resolution passed by the holding company shall be sufficient for the purpose of entering into the transactions between wholly owned subsidiary and holding company.

The explanatory statement to be annexed to the notice of a general meeting convened pursuant to section 101 shall contain the following particulars:
(a) name of the related party;
(b) name of the director or key managerial personnel who is related, if any;
(c) nature of relationship;
(d) nature, material terms, monetary value and particulars of the contract or arrangement;
(e) any other information relevant or important for the members to take a decision on the proposed resolution.

No member of the company shall vote on such special resolution, to approve such contracts or arrangement, if such member is a related party.

Where the transactions mentioned above are carried out or done in the ordinary course of business and on the arm’s length transaction basis, then there is no requirement of obtaining approval from Board of Directors.

Arms Length Transaction
Arm’s length transaction would mean transaction between two related or affiliated parties that is conducted as if they were unrelated, so that there is no question of a conflict of interest. The concept of an arm’s length transaction is to ensure that both parties in the deal are acting in their own self-interest and are not subject to any pressure or duress from the other part.

Disclosure in Board’s Report
Every related party contracts or arrangements shall have to be disclosed in the Board’s report and referred to shareholders along with the justification for entering into such type of transactions.

Consequences of Contravention of Provisions
In case, where any contract or arrangement is entered into by a director or any other employee, without obtaining the consent of the Board or approval by a special
resolution in the general meeting under sub-section (1) and,

(i) if it is not ratified by the Board or
(ii) by the shareholders at a meeting within three months from the date on which such contract or arrangement was entered into,

such contract or arrangement shall be voidable at the option of the Board and if the contract or arrangement is with a related party to any director, or is authorised by any other director, the directors concerned shall indemnify the company against any loss incurred by it.

**Recovery of Loss in Related Party Transaction**

Besides subsequent approval, it shall be open to the company to proceed against a director or any other employee who had entered into such contract or arrangement in contravention of the provisions of this section for recovery of any loss sustained by it as a result of such contract or arrangement.

**Penal Provisions**

Any director or any other employee of a company, who authorised to enter into the contracts or arrangement, in violation of the provisions of this section, shall be punishable as under -

(i) In case of listed company – Any director or other employee of the listed company be punishable with,

(a) imprisonment for a term which may extend to 1 year; or
(b) fine which shall not be less than twenty five thousand rupees but which may extend to five lakh rupees; or
(c) with both.

(ii) In case of other than listed company – Any director or other employee of the unlisted company be punishable with fine which shall not be less than twenty five thousand rupees but which may extend to five lakh rupees.

**Other Disclosures / Provisions**

Following approaches and disclosures are also required in relation to the transaction between the company and related parties:

— Any arrangement between a company and its director in respect of acquisition of assets for consideration other than cash shall require prior approval by a resolution in general meeting and if the director or connected person is a director of its holding company, approval is required to be obtained by passing a resolution in general meeting of the holding company. [Section 192].

— Where a one person company limited by shares or by guarantee enters into a contract with the sole member of the company who is also its director, the company shall unless the contract is in writing, ensure that the terms of the contract or offer are contained in the memorandum or are recorded in the minutes of the first Board meeting held after entering into the contract. The company shall inform the Registrar about every contract entered into by the company are recorded in the minutes. [Section 193]
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— The Companies Act requires the Audit Committee to approve or modify transaction with related parties, scrutinise inter-corporate loans and investments and value undertaking or assets of the company, wherever it is necessary. Further, the Companies Act gives Audit Committee the authority to investigate into any matter falling under its domain and the power to obtain professional advice from external sources and have full access to information contained in the records of the company.

Section 189: Register of Contracts or Arrangements in which Directors are interested

Every company is required to keep one or more registers in Form MBP 4 giving separately the particulars of all contracts or arrangements and shall enter therein the particulars of (Rule 16(1))-

(a) company or companies or bodies corporate, firms or other association of individuals, in which any director has any concern or interest as mentioned in sub-section (1) of section 184. But the particulars of the company or companies or bodies corporate in which a director himself together with any other director holds two percent or less of the paid-up share capital would not be required to be entered in the register.

(b) contracts or arrangements with a body corporate or firm or other entity as mentioned under sub-section (2) of section 184, in which any director is, directly or indirectly, concerned or interested; and

(c) contracts or arrangements with a related party with respect to transactions to which section 188 applies;

The entries in the register shall be made at once, whenever there is a cause to make entry, in chronological order and shall be authenticated by the company secretary of the company or by any other person authorized by the Board for the purpose. (Rule 16(2))

Such register shall be kept at the registered office of the company and the register shall be preserved permanently and shall be kept in the custody of the company secretary of the company or any other person authorized by the Board for the purpose. (Rule 16(3))

Such register or registers are required to be placed before the next meeting of the Board and signed by all the directors present at the meeting.

Every director within thirty days of his appointment or relinquishment is required to disclose his concern or interest in other associations, which are required to be included in the register.

The register be kept at the registered office of the company and also open for inspection during business hours. The company shall provide extracts from such register to a member of the company on his request, within seven days from the date on which such request is made upon the payment of such fee as may be specified in the articles of the company but not exceeding ten rupees per page. (Rule 16(4))
Penalty

Every director who fails to comply is liable to a penalty of twenty-five thousand rupees.

Section 190: Contract of Employment with Managing Director or Whole-Time Directors

Every company which is not a private company is required to keep the copy of contract if in writing with a managing director or whole-time director for contract of service or a written memorandum setting its terms if not in writing.

The abovementioned copies required to be kept open to inspection for any member of the company free of cost.

Penalty

The default in complying with the provisions of this section, the company is liable to a penalty of twenty five thousand rupees and every officer of the company who is in default liable to a penalty of five thousand rupees for each default.

Section 191: Payment to Director for Loss of Office, etc., in Connection with Transfer of Undertaking, Property or Shares

No director of a company shall receive any payment by way of compensation in case of transfer of the whole or any part of any undertaking or property of the company or the transfer to any person of all or any of the shares in a company; the following particulars mentioned in Rules 17 are required to be disclosed to the members of the company and they pass a resolution at a general meeting approving the payment of such amount:-

(a) name of the director
(b) amount proposed to be paid;
(c) event due to which compensation become payable;
(d) date of Board meeting recommending such payment;
(e) basis for the amount determined;
(f) reason/justification for the payment;
(g) manner of payment - whether payable in cash or otherwise and how;
(h) sources of payment; and
(i) any other relevant particulars as the Board may think fit.

Any payment made by the company to a managing director or whole-time director or manager of the company by way of compensation for loss of office or as a consideration for retirement from office or in connection with such loss or retirement subject to the limit as set out under section 202. (Rule 17(2))

No payment shall be made to the managing director or whole time director or manager of the company by way of compensation for the loss of office or as
consideration for retirement from office (Rule 17(3)) (other than notice pay and statutory payments in accordance with the terms of appointment of such director or manager, as applicable) or in connection with such loss or retirement if:

(a) the company is in default in repayment of public deposits or payment of interest thereon;

(b) the company is in default in redemption of debentures or payment of interest thereon;

(c) the company is in default in repayment of any liability, secured or unsecured, payable to any bank, public financial institution or any other financial institution;

(d) the company is in default in payment of any dues towards income tax, VAT, excise duty, service tax or any other tax or duty, by whatever name called, payable to the Central Government or any State Government, statutory authority or local authority (other than in cases where the company has disputed the liability to pay such dues);

(e) there are outstanding statutory dues to the employees or workmen of the company which have not been paid by the company (other than in cases where the company has disputed the liability to pay such dues); and

(f) the company has not paid dividend on preference shares or not redeemed preference shares on due date.

If the payment is not approved for want of quorum either in a meeting or an adjourned meeting, the proposal shall not be deemed to have been approved.

If a director of a company receives payment of any amount in contravention of sub-section (1) or the proposed payment is made before it is approved in the meeting, the amount so received by the director shall be deemed to have been received by him in trust for the company.

Penalty upon Contravention

The director who contravenes shall be punishable with fine which shall not be less than twenty-five thousand rupees but which may extend to one lakh rupees.

Section 192: Restriction on Non-Cash Transactions Involving Directors

A company can’t enter into an agreement by which –

(a) 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

(b) the company acquires or is to acquire assets for consideration other than cash, from such director or person so connected.

A company can enter into an arrangement only with the prior approval for such arrangement is accorded by a resolution of the company in general meeting and if the director or connected person is a director of its holding company, approval shall also be required to be obtained by passing a resolution in general meeting of the holding company.
The notice for approval of the resolution by the company or holding company in general meeting shall include the particulars of the arrangement along with the value of the assets involved in such arrangement duly calculated by a registered valuer.

Any arrangement entered into by a company or its holding company in contravention of the provisions of this section shall be voidable at the instance of the company.

The arrangement will be valid if the restitution of any money or other consideration which is the subject matter of the arrangement is no longer possible and the company has been indemnified by any other person for any loss or damage caused to it; or any rights are acquired bona fide for value and without notice of the contravention of the provisions of this section by any other person.

Section 193: Contract by One Person Company

Where One Person Company limited by shares or by guarantee enters into a contract except in its ordinary course of business with the sole member of the company who is also the director of the company, the company shall ensure that the contract is in writing.

If the contract is not in writing, it ensure that the terms of the contract or offer are contained in a memorandum or are recorded in the minutes of the first meeting of the Board of Directors of the company held next after entering into contract.

The company is required to inform the Registrar about every contract entered into by the company and recorded in the minutes of the meeting of its Board within a period of fifteen days of the date of approval by the Board.

Section 194: Prohibition on Forward Dealings in Securities of Company by Director or Key Managerial Personnel

Directors and key managerial personnel are prohibited from buying in the company, or in its holding, subsidiary or associate company –

(a) 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

(b) 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.

Contravention and Penalty

Such director or key managerial personnel shall be punishable with imprisonment for a term which may extend to two years or with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees, or with both.

Such director or key managerial personnel is liable to surrender the same to the company and the company shall not register the securities so acquired in his name in the register, and if they are in dematerialised form, it shall inform the depository not to record such acquisition and such securities, in both the cases, shall continue to remain in the names of the transferors.
SECTION 195: Prohibition on Insider Trading of Securities

Insider trading is totally prohibited in the Act. Even a person other than a director or key managerial personnel is not allowed to insider trading. Any communication required in the ordinary course of business or profession or employment or under any law is not amounting to insider trading.

Meaning of Insider Trading

An act of subscribing, buying, selling, dealing or agreeing to subscribe, buy, sell or deal in any securities by any director or key managerial personnel or any other officer of a company either as principal or agent if such director or key managerial personnel or any other officer of the company is reasonably expected to have access to any non-public price sensitive information in respect of securities of company; or

An act of counselling about procuring or communicating directly or indirectly any non-public price-sensitive information to any person;

Contravention and Penalty

If any person contravenes the provisions of this section, he shall be punishable with imprisonment for a term which may extend to five years or with fine which shall not be less than five lakh rupees but which may extend to twenty-five crore rupees or three times the amount of profits made out of insider trading, whichever is higher, or with both.
CHAPTER - X

APPOINTMENT AND REMUNERATION OF KEY MANAGERIAL PERSONNEL
NOTES
APPONTEMENT AND REMUNERATION
OF KEY MANAGERIAL PERSONNEL

Introduction
Chapter XIII of the Companies Act, 2013 read with Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014 deal with the legal and procedural aspects of appointment of Key Managerial Personnel including Managing Director, Whole-time Director or Manager, managerial remuneration, secretarial audit etc.

Key Managerial Personnel
The Companies Act, 2013 has for the first time recognized the concept of Key Managerial Personnel. As per section 2(51) “key managerial personnel”, in relation to a company, means—
(i) the Chief Executive Officer or the managing director or the manager;
(ii) the company secretary;
(iii) the whole-time director;
(iv) the Chief Financial Officer; and
(v) such other officer as may be prescribed.

Appointment of Managing Director, Whole-Time Director or Manager
Section 196 of the Companies Act, 2013 provides that no company shall appoint or employ at the same time a Managing Director and a Manager. Further, a company shall not appoint or reappoint any person as its Managing Director, Whole Time Director or manager for a term exceeding five years at a time and no reappointment shall be made earlier than one year before the expiry of his term.

Section 196(4) of the Companies Act, 2013 provides that subject to the provisions of section 197 and Schedule V, a managing director, whole-time director or manager shall be appointed and the terms and conditions of such appointment and remuneration payable be approved by the Board of Directors at a meeting which shall be subject to approval by a resolution at the next general meeting of the company and by the Central Government in case such appointment is at variance to the conditions specified in Schedule V. Approval of the Central Government is not necessary if the appointment is made in accordance with the conditions specified in Schedule V to the Act.

Therefore, the appointment of a managing director or whole-time director or manager and the terms and conditions of such appointment and remuneration payable thereon must be first approved by the Board of directors at a meeting and then by an ordinary resolution passed at a general meeting of the company.

A notice convening Board or general meeting for considering such appointment shall include the terms and conditions of such appointment, remuneration payable
and such other matters including interest, of a director or directors in such appointments, if any.

A return in the prescribed form viz. MR.1 is required to be filed with Registrar within 60 days from the date of such appointment.

Section 196(5) provides that subject to the provisions of this Act, where an appointment of a managing director, whole-time director or manager is not approved by the company at a general meeting, any act done by him before such approval shall not be deemed to be invalid.

Appointment with the Approval of Central Government

In case the provisions of Schedule V of the Companies Act, 2013 are not fulfilled by company, an application seeking approval to the appointment of a managing director (Whole-time director or manager) shall be made to the Central Government, in e-Form No. MR.2.

As per section 200, the Central Government or a company may, while according its approval under section 196, to any appointment of a managing director, whole-time director or manager, the Central Government or the company shall have regard to—

(a) the financial position of the company;
(b) the remuneration or commission drawn by the individual concerned in any other capacity;
(c) the remuneration or commission drawn by him from any other company;
(d) professional qualifications and experience of the individual concerned;
(e) such other matters as may be prescribed.

As per Rule 6 for the purposes of item (e) of section 200, the Central Government or the company shall have regard to the following matters while granting approval to the appointment of managing director under section 196:

(1) Financial and operating performance of the company during the three preceding financial years.
(2) Relationship between remuneration and performance.
(3) The principle of proportionality of remuneration within the company, ideally by a rating methodology which compares the remuneration of directors to that of other executive directors on the board and employees or executives of the company.
(4) Whether remuneration policy for directors differs from remuneration policy for other employees and if so, an explanation for the difference.
(5) The securities held by the director, including options and details of the shares pledged as at the end of the preceding financial year.

Disqualifications

Section 196(3) of the Act makes a specific prohibitory provision with regard to the appointment of managing director, whole time director or manager. The section lays
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down that no company shall appoint or continue the employment of any person as its managing director, whole time director or manager who—

(a) is below the age of twenty-one years or has attained the age of seventy years:

Provided that appointment of a person who has attained the age of seventy years may be made by passing a special resolution in which case the explanatory statement annexed to the notice for such motion shall indicate the justification for appointing such person;

(b) is an undischarged insolvent or has at anytime been adjudged as an insolvent;

(c) has at any time suspended payment to his creditors, or makes, or has at any time made, a composition with them; or

(d) has at any time been, convicted by a court of an offence and sentenced for a period of more than six months.

Apart from this, Part I of Schedule V contains five conditions which must be satisfied by a person to be eligible for appointment as managing director, whole-time director or manager without the approval of the Central Government. These conditions are as below:

(a) he had not been sentenced to imprisonment for any period, or to a fine exceeding one thousand rupees, for the conviction of an offence under any of the Acts (Given in Schedule V).

(b) he had not been detained for any period under the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974;

Provided that where the Central Government has given its approval to the appointment of a person convicted or detained under sub-paragraph (a) or sub-paragraph (b), as the case may be, no further approval of the Central Government shall be necessary for the subsequent appointment of that person if he had not been so convicted or detained subsequent to such approval;

(c) he has completed the age of 21 years and has not attained the age of 70 years:

Provided that where he has attained the age of 70 years; and where his appointment is approved by a special resolution passed by the company in general meeting, no further approval of the Central Government shall be necessary for such appointment;

a. where he is a managerial person in more than one company, he draws remuneration from one or more companies subject to the ceiling provided in section V of Part II;

(e) he is resident in India.

But this condition shall not be applicable to the companies in Special Economic Zones, as may be notified by Department of Commerce from time to time.

However, a person, being a non-resident in India, shall enter India only after obtaining a proper Employment Visa from the concerned Indian mission abroad.

Reappointment of Managing Director
Under sections 196 and 203 of the Companies Act, 2013, appointment includes reappointment. Reappointment of a managing director of a company must be taken for consideration before the expiry of his term of office. If the reappointment of the managing director is approved and if it is not in accordance with the conditions specified in Schedule V then the approval of the Central Government must be obtained for such reappointment. Rest of the provisions for reappointment of a managing director are same as in the case of appointment of a managing director.

Appointment of Key Managerial Personnel

Section 203 of the Companies Act, 2013 read with Rule 8 mandates the appointment of Key Managerial Personnel and makes it obligatory for a listed company and every other public company having a paid-up share capital of rupees ten crores or more, to appoint following whole-time key managerial personnel:

(i) managing director, or Chief Executive Officer or manager and in their absence, a whole-time director; (ii) company secretary; and (iii) Chief Financial Officer:

Every whole-time key managerial personnel of a company shall be appointed by means of a resolution of the Board containing the terms and conditions of the appointment including the remuneration.

An individual shall not be appointed or reappointed as the chairperson of the company, as well as the managing director or Chief Executive Officer of the company at the same time unless the articles of such a company provide otherwise; or the company does not carry multiple businesses. However, such class of companies engaged in multiple businesses and which has appointed one or more Chief Executive Officers for each such business as may be notified by the Central Government are exempted from the above.

A whole-time key managerial personnel shall not hold office in more than one company except in its subsidiary company at the same time. However, he can hold such other directorship with the permission of the Board.

A whole-time key managerial personnel holding office in more than one company at the same time, shall, within a period of six months from such commencement, choose one company, in which he wishes to continue to hold the office of key managerial personnel.

A company may appoint or employ a person as its managing director, if he is the managing director or manager of one, and of not more than one, other company and such appointment or employment is made or approved by a resolution passed at a meeting of the Board with the consent of all the directors present at the meeting and of which meeting, and of the resolution to be moved thereat, specific notice has been given to all the directors then in India.

If the office of any whole-time key managerial personnel is vacated, the resulting vacancy shall be filled-up by the Board at a meeting of the Board within a period of six months from the date of such vacancy.
Functions of Company Secretary

According to Section 205 the functions of the company secretary shall include,—

(a) to report to the Board about compliance with the provisions of this Act, the rules made thereunder and other laws applicable to the company;

(b) to ensure that the company complies with the applicable secretarial standards;

(c) to discharge such other duties as may be prescribed.

For the purposes of clause (c) of sub-section (1) of section 205, the Central Government has prescribed certain duties of Company Secretary.

MANAGERIAL REMUNERATION

Remuneration to Managerial Personnel

Section 197 of the Companies Act, 2013 prescribed the maximum ceiling for payment of managerial remuneration by a public company to its managing director whole-time director and manager which shall not exceed 11% of the net profit of the company in that financial year computed in accordance with section 198 except that the remuneration of the directors shall not be deducted from the gross profits.

Further, the company in general meeting may, with the approval of the Central Government, authorise the payment of remuneration exceeding 11% of the net profits of the company, subject to the provisions of Schedule V.

The net profits for the purposes of this section shall be computed in the manner referred to in section 198.

The remuneration payable to any one managing director or whole-time director or manager shall not exceed 5% of the net profits of the company and if there are more than one such director remuneration shall not exceed 10% of the net profits to all such directors and manager taken together.

Except with the approval of the company in general meeting, the remuneration payable to directors who are neither managing directors nor whole-time directors shall not exceed,—

— 1% of the net profits of the company, if there is a managing or whole-time director or manager;

— 3% of the net profits in any other case.

The percentages aforesaid shall be exclusive of any fees payable to directors for attending the meeting of the board/committees or for such other purposes as decided by the board.

Remuneration by a Company having no Profit or Inadequate Profit

If, in any financial year, a company has no profits or its profits are inadequate, the
company shall not pay to its directors, including managing or whole time director or manager, any remuneration exclusive of any fees payable to directors except in accordance with the provisions of Schedule V and if it is not able to comply with Schedule V, with the previous approval of the Central Government.

In cases, where Schedule V is applicable on grounds of no profits or inadequate profits, any provision relating to the remuneration of any director which purports to increase or has the effect of increasing the amount thereof, shall not have any effect unless such increase is in accordance with the conditions specified in that Schedule and if such conditions are not being complied, the approval of the Central Government had been obtained.

Remuneration to Directors in other Capacity [Section 197(4)]

The remuneration payable to the directors including managing or whole-time director or manager shall be inclusive of the remuneration payable for the services rendered by him in any other capacity except the following:

(a) the services rendered are of a professional nature; and

(b) in the opinion of the Nomination and Remuneration Committee (if applicable) or the Board of Directors in other cases, the director possesses the requisite qualification for the practice of the profession.

Sitting Fees to Directors for Attending the Meetings [Section 197(5)]

A director may receive remuneration by way of fee for attending the Board/Committee meetings or for any other purpose as may be decided by the Board. Provided that the amount of such fees shall not exceed the amount as may be prescribed.

The Central Government through rules prescribed that the amount of sitting fees payable to a director for attending meetings of the Board or committees thereof may be such as may be decided by the Board of directors or the Remuneration Committee thereof which shall not exceed the sum of rupees 1 lakh per meeting of the Board or committee thereof.

The Board may decide different sitting fee payable to independent and non-independent directors other than whole-time directors.

Monthly Remuneration to Director or Manager

A director or manager may be paid remuneration either by way of a monthly payment or at a specified percentage of the net profits of the company or partly by one way and partly by the other. [Section 197 (6)]

An independent director shall not be entitled to any stock option and may receive remuneration by way of fees, reimbursement of expenses for participation in the Board and other meetings and profit related commission as may be approved by the members. [Section 197 (7)]

Any director who is in receipt of any commission from the company and who is a managing or whole-time director of the company shall not be disqualified from receiving any remuneration or commission from any holding company or subsidiary company of such company subject to its disclosure by the company in the Board’s
Remuneration Drawn in Excess of Prescribed Limit

If any director draws or receives, directly or indirectly, by way of remuneration any such sums in excess of the limit prescribed or without the prior sanction of the Central Government, where it is required, he shall refund such sums to the company and until such sum is refunded, hold it in trust for the company. [Section 197(9)]

The company shall not waive the recovery of any sum refundable to it under sub-section 9 mentioned above, unless permitted by the Central Government. [Section 197(10)]

Disclosure of Remuneration in Board Report [(Section 197 (14)]

Every listed company shall disclose in the Board’s report, the ratio of the remuneration of each director to the median employee’s remuneration and such other details as may be prescribed.

The board’s report shall include a statement showing the name of every employee of the company who-

(i) if employed throughout the financial year, was in receipt of remuneration for that year which, in the aggregate, was not less than sixty lakh rupees;

(ii) if employed for a part of the financial year, was in receipt of remuneration for any part of that year, at a rate which, in the aggregate, was not less than five lakh rupees per month;
Managerial Remuneration under Schedule V (Part II)

Section I : Remuneration by Companies having Profits

A company having profits in a financial year may pay remuneration to its managerial persons in accordance with Section 197.

Section II : Remuneration by Companies having no profits or inadequate profits without Central Government approval

Where in any financial year during the currency of tenure of a managerial person, a company has no profits or its profits are inadequate, it, may, without Central Government approval, pay remuneration to the managerial person not exceeding the higher of the limits under (A) and (B) below:

(A):

<table>
<thead>
<tr>
<th>Where the effective capital is</th>
<th>Limit of yearly remuneration payable shall not exceed (Rs)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Negative or less than 5 Crore</td>
<td>30 Lakh</td>
</tr>
<tr>
<td>5 Crore and above but less than 100 Crore</td>
<td>42 Lakh</td>
</tr>
<tr>
<td>100 Crore and above but less than 250 Crore</td>
<td>60 Lakh</td>
</tr>
<tr>
<td>250 Crore and above</td>
<td>60 Lakhs plus 0.01% of the effective capital in excess of Rs. 250 Crore</td>
</tr>
</tbody>
</table>
If a special resolution is passed by the shareholders, the above limits shall be doubled.

Explanation:- It is hereby clarified that for a period less than one year, the limits shall be pro-rated.

(B) In the case of managerial person who was not a shareholder, employee or a Director of the company at any time during the two years prior to his appointment as managerial person- 2.5% of the current relevant profit.

If a special resolution is passed by the shareholders, this limit shall be doubled.

The Schedule V (Part II) also prescribes certain conditions and additional disclosures to be made in the explanatory statement to the notice of the general meeting, where remuneration is required to be paid in accordance with Schedule V.

Remuneration in Special Circumstances (Section III)

Section III of Schedule V provides special circumstances under which companies having no profit or inadequate profit can pay remuneration to its managerial personnel in excess of amount provided in Section II of Schedule V above, without Central Government's approval.

Calculation of Net Profit for the purpose of Managerial Remuneration (Section 198)

Section 198 of the Companies Act, 2013 lays down the manner of calculations of net profits of a company any financial year for purposes of Section 197. Sub-Section (2) specifies the sums for which credit shall be given and sub-section (3) specifies the sums for which credit shall not be given while calculating the net profit.

Similarly, sub-section (4)/(5) specifies the sums which shall be deducted/not deducted while calculating the net profit.

Recovery of Managerial Remuneration in certain cases (Section 199)

This is a new provision introduced in the new Act. It provides for recovery of remuneration including stock options received by the specified Managerial Personnel, where the benefits given to them are found to be in excess of what is reflected in the restated financial statements.

It states that without prejudice to any liability incurred under the provisions of this Act or any other law for the time being in force, where a company is required to re-state its financial statements due to fraud or non-compliance with any requirement under this Act and the rules made there under, the company shall recover from any past or present managing director or whole-time director or manager or Chief Executive Officer (by whatever name called) who, during the period for which the financial statements are required to be re-stated, received the remuneration (including stock option) in excess of what would have been payable to him as per restatement of financial statements.
Central Government or Company to Fix Remuneration Limit (Section 200)

In respect of cases where the company has inadequate or no profits, the Central Government or a company may fix the remuneration within the limits specified in the Act.

Compensation for Loss of Office of Managing or Whole-time Director or Manager (Section 202)

No change has been made in this Section. It is a reproduction of the Section 318 of the Companies Act, 1956.

Conclusion

The new Act has considerably liberalised the provisions concerning Managerial Remuneration, subject to adequate disclosures to the shareholders. The necessity of approaching Central Government for approval has been substantially dispensed with.

A synopsis of the modifications made is given below:

1. Now, no approval of the Central Government is required for making payment of salary to Non Executive Directors by way of monthly payment provided it is within the limits provided.

2. The re-appointment of a managerial person cannot be made earlier than one year before the expiry of their term instead of two years as per the existing provision of section 317 of the 1956 Act.

3. Any Director who is in receipt of any commission from the company and who is a Managing Director or Whole-time Director of the Company can also receive any remuneration or commission from any Holding Company or Subsidiary Company of such Company subject to its disclosure by the Company in the Board’s Report. This is a departure from the provision in the Companies Act, 1956. Further the directors however cannot accept remuneration or commission from any other Company including Associate Companies.

4. Independent Directors may be paid different Sitting Fees compared to other directors. Independent Directors cannot receive stock options. They may receive remuneration only by way of sitting fees, or reimbursement of expenses for participation in the Board and other meetings or profit related commission as approved by the members of the company.

5. Every Listed Company will have to disclose in the Board’s report the ratio of the remuneration of each Director to the median employee’s remuneration and such other details as prescribed by the Central Government through the Rules. In view of the widespread debate in the country and abroad on the subject of excessive managerial pay, the purpose of bringing this provision appears to disclose to the shareholders the extent of pay comparison among employees and directors.

6. Premium paid on any insurance policy taken by a Company on behalf of its Managing Director, Whole-Time Director, Manager, Chief Executive Officer, Chief Financial Officer or Company Secretary for indemnifying any of them against any liability in respect of any negligence, default, misfeasance, breach of duty or breach
of trust for which they may be guilty in relation to the Company, shall not be treated as part of the remuneration payable to them unless such personnel is proved to be guilty.

7. For remuneration payable to any Director in any other capacity, if such services are of professional nature, no approval of the Central Government is required, when the Nomination and Remuneration Committee or Board of Directors is of the opinion, that the person possesses the necessary qualification for practice of profession.

8. In case of Nil or inadequate profit, the conditions under which the Company can pay remuneration to managerial person has been changed.

SECRETARIAL AUDIT

Secretarial Audit is a compliance audit and it is a part of total compliance management in an organisation. The Secretarial Audit is an effective tool for corporate compliance management. It helps to detect non-compliance and to take corrective measures.

Secretarial Audit is a process to check compliance with the provisions of various laws and rules/ regulations/procedures, maintenance of books, records etc., by an independent professional to ensure that the company has complied with the legal and procedural requirements and also followed the due process. It is essentially a mechanism to monitor compliance with the requirements of stated laws.

Considering the increasing importance of Corporate Governance, Section 204 of the Companies Act, 2013 mandates every listed company and such other class of prescribed companies to annex a Secretarial Audit Report, given by a company secretary in practice with its Board’s report.

The Central Government through rules has prescribed such other class of companies as under-

(a) every public company having a paid-up share capital of fifty crore rupees or more; or

(b) every public company having a turnover of two hundred fifty crore rupees or more.

It shall be the duty of the company to give all assistance and facilities to the company secretary in practice, for auditing the secretarial and related records of the company.

The Board of Directors, in their report, shall explain in full any qualification or observation or other remarks made in the Secretarial Audit Report.

Secretarial Audit is an independent, objective assurance intended to add value and improve an organisation’s operations. It helps to accomplish the organisation’s objectives by bringing a systematic, disciplined approach to evaluate and improve effectiveness of risk management, control, and governance processes.
CHAPTER - XI

INSPECTION, INQUIRY AND INVESTIGATION
Introduction

Investigation within the meaning of the relevant provisions of the Act is a form of probe; a deeper probe; into the affairs of a company. It is a fact finding exercise. The main object of investigation is to collect evidence and to see if any illegal acts or offences are disclosed and then decide the action to be taken. The said expression also includes investigation of all its business affairs—profits and losses, assets including goodwill, contracts and transactions, investments and other property interests and control of subsidiary companies too.

Power of the Registrar to call for information and inspect documents (Section 206)

Obligation of the company to provide information, explanations and documents as the Registrar may direct

On the basis of scrutiny of any document filed by a company or any information received if the Registrar forms the opinion that any further information, explanation or any further document relating to company is necessary, he may by a written notice require the company:

— furnish in writing such information or explanation; or
— to produce such documents.

The information, explanation or documents must be provided within a reasonable time as specified in the notice. The responsibility for compliance with this obligation is on the company and its officers who shall do so to the best of their knowledge and power. However, the obligation to provide information or explanation relating to any past period shall be on an officer who had been in the employment of the company during such period and if so called upon by the Registrar by means of a notice.

Power of the Registrar to inspect books, paper, documents, etc.

In the following situations, the Registrar may require the company by a written notice to produce for his inspection further books of account, books, paper and explanations at specified time and place:

— On company’s failure to furnish information or explanation within the time specified in the notice under Section 206(1);
— On examination of documents, the Registrar is of the opinion that information or explanation furnished is inadequate;
— On scrutiny, the Registrar considers that an unsatisfactory state of affairs exists in the company and does not disclose full and fair information.

Before serving a notice under section 206(3), the Registrar shall record in writing the
reasons for issuing such notice.

**Power of the Registrar to conduct inquiry**

(i) **Grounds for conduct of inquiry**

On the basis of the information available or furnished or representations made by any person, the Registrar is satisfied that: (a) the business of the company is being carried on for a fraudulent or unlawful purpose, or not in compliance with the provisions of this Act; or (b) Investor’s grievances are not being addressed, the Registrar may after informing the company of the allegations made against it, require through a written order to furnish in writing any information or explanation.

Thereafter Registrar may conduct such inquiry as he deems fit after giving the company a reasonable opportunity of being heard.

(ii) **Central Government’s powers to direct the Registrar or an Inspector to conduct inquiry**

If the Central Government is satisfied that the circumstances so warrant, it may direct the Registrar or an Inspector appointed for the purpose to conduct an inquiry under this sub-section.

(iii) **Liability of Officers for fraud**

Where the business of a company has been or is being carried on for a fraudulent or unlawful purpose, every officer of the company who is in default shall be punishable for fraud in the manner provided in Section 447.

**Power of the Central Government to direct inspection of books etc.**

Having regard to the circumstances, the Central Government may take either of the following actions:

(i) It may direct an Inspector to inspect books and papers of a company;

(ii) It may, by a general or special order, authorize any statutory authority to carry out inspection of books of accounts of a company or class of companies.

**Punishment for non-compliance**

Failure by the company to furnish any information or explanation or any documents required under section shall make the company and every officer who is in default liable to a fine which may extend to one lakh rupees and in case of a continuing failure with an additional fine of five hundred rupees for everyday after the first during which the failure continues.

**Conduct of Inspection and Inquiry (Section 207)**

(i) **Duty of every director and officer of the company to render assistance to the Registrar or Inspector**

It shall be duty of every director, officer or other employee of the company (a) to produce
books of account, books and other papers as the Registrar or Inspector may call under Section 206 and (b) to furnish him such statements, information or explanations as the Registrar or Inspector may require and (c) to render all assistance in connection with such inspection.

(ii) **Right of Registrar or Inspector to take copies of books of account**

The Registrar or Inspector making an inspection or inquiry under section may do the following in the course of inspection or inquiry:

(a) to make copies of books of account and other books and papers; or

(b) to place marks of identification on the books in token of inspection having been made.

(iii) **Registrar or Inspector to have the powers of civil court**

The Registrar or Inspector conducting inspection or inquiry shall have the powers of a civil court as provided in the Civil Procedure Code, 1908 while trying a suit.

**Punishment for disobeying the direction**

Any director or officer of the company disobeying the directions issued by the Registrar or the Inspector under section 207 shall be punishable with imprisonment extending to one year and a fine of not less than twenty-five thousand rupees but which may extend to one lakh rupees.

On and from the date on which a director or officer of the company has been convicted of an office under Section 207, he shall be deemed to have vacated his office and on such vacation of office, he shall be disqualified from holding office in any company.

**Reporting by Registrar on Inspection or Inquiry (Section 208)**

After the inspection of books of account or inquiry under Section 206 and other books and papers under section 207, the Registrar shall submit a written report to the Central Government. The report may recommend the need for further investigation alongwith reasons in support.

**Search and Seizure (Section 209)**

On the basis of information in his possession, if the Registrar or Inspector has reasonable ground to believe that the books and papers of a company, or relating to key managerial personnel or any director or auditor or company secretary in practice of company has not appointed a company secretary, are likely to be destroyed, mutilated, altered, falsified or secreted he may, after obtaining an order from the special court.

(a) enter with such assistance as may be required and search the place where such books or papers are kept; and

(b) seize such books and papers as he considers necessary after allowing the company to take copies or extracts there from.

The seized books and papers shall be returned to the company within a period which is not later than 180 days of the date of seizure. However, the books and papers may be
again called for by the Registrar or Inspector for a further period of 180 days. Before returning the books and papers, the Registrar or Inspector may take copies or extracts from them or place identification marks thereon or deal with them in such manner as he considers necessary.

The provisions of the Code of Criminal Procedure, 1973 relating to search or seizure shall apply mutatis mutandis to every search and seizure made under this section.

Appointment of Investigators by Central Government [Section 210]

On the basis of the following, the Central Government may appoint one or more inspectors to investigate the affairs of the company and to report, thereon:

(a) On the receipt of report of the Registrar or Inspectors under Section 208;
(b) On intimation of a special resolution passed by a company that the affairs of the company ought to be investigated
(c) In public interest

Where an order is passed by a court or the Tribunal in any proceedings before it that the affairs of a company ought to be investigated, the Central Government shall order an investigation into the affairs of that company.

Serious Frauds Investigation Office (SFIO)

This need to establish a separate Serious Frauds Investigation Office was first indicated by the Naresh Chandra Committee Report on Corporate Audit and Governance. It is on the basis of this background that the Companies Act has made provisions for the setting up of a Serious Frauds Investigation Office which had carved out a niche in successfully investigating the Satyam scam.

Serious Frauds Investigation Office (SFIO) is a multi-disciplinary organization under the Ministry of Corporate Affairs consisting of experts in the field of accounting, forensic auditing, law, information technology, law, capital markets, and taxation concerned with detection and prosecuting or recommending for prosecution white collar frauds.

Establishment of SFIO (Section 211)

The Serious Frauds Investigation Office shall be established by the Central Government with the object of investigating frauds relating to a company. However, the SFIO set up earlier vide Government of India resolution No.45011/16/2003-Admn1 dated 2nd July 2003 shall be deemed to be the Serious Frauds Investigation Office for the purpose of this section.

The SFIO shall be headed by a Director. It shall consist of such number of experts from the following field to be appointed by the Central Government.

Investigation by SFIO into the affairs of a company [section 212]

Basis of ordering investigation by the Central Government

The Central Government may assign the investigation into affairs of a company to the
COMPANIES ACT, 2013

Serious Frauds Investigation Office on the basis of an opinion formed from the following:
(a) on receipt of report of the Registrar or Inspector under section 208;
(b) on intimation of a special resolution passed by a company requesting an investigation into its affairs;
(c) in public interest;
(d) on the request of any Department of Central Government or a State Government.

Security for payment of costs and expenses of investigation [Section 214]

Where an investigation is ordered by the Central Government under section 210(1) or pursuant to Tribunal's order under section 213, then before appointing an Inspector, the Central Government may require the applicants to give a security not exceeding Rs.25,000 towards the costs and expenses of investigation.

Firm, body corporate or association not to be appointed as inspector (Section 215)

As per Section 215 a Firm, body corporate or association shall not to be appointed as inspector for inspection and investigation of the company.

Investigation of ownership of company [Section 216]

The Central Government may if it has reason to believe or shall upon the direction of the Tribunal that the affairs of the company ought to be investigated as regards membership of company, appoint one or more inspectors to investigate and report on matters relating to the company and its membership for determining the true persons:
(a) who are or have been financially interested in the success or failure whether real or apparent of the company; or
(b) who are or have been able to control or materially able to influence the policy of the company

Procedure, powers etc., of inspectors (Section 217)

Duties of officers, employees, agents, etc., of the company or body corporate under investigation

Section 217(1) obligates all existing and former officers, employees and agents of the company which is under investigations within the provisions of this Chapter or of the body corporate being investigated under Section 219:
(a) to preserve and produce to an inspector all books and papers of or relating to the company or the other body corporate or person which are in their custody or power; and
(b) to give to the inspector all assistance in connection with the investigation which they are reasonably able to give.
**Duty of Central/State Government officers to provide assistance to the Inspector**

Where the inspector so requires with the prior approval of the Central Government it shall be obligatory for the officers of the Central/State Government, police or statutory authority to provide necessary assistance to the inspector for the purpose of inspection, inquiry or investigation.

**Reciprocal arrangements with foreign governments for inspection, inquiry and investigation**

In terms of Section 217(10), the Central Government may make reciprocal arrangements, with a foreign state to assist in any inspection, inquiry or investigation under this Act or under the corresponding law in force in that state. For this purpose, the Central Government may by notification apply this Chapter subject to modifications, exceptions, conditions and qualifications as may be deemed expedient for implementing the agreement with that state.

**Seizure of documents by the Inspector (Section 220)**

Where in the course of investigation, the inspector has reasonable grounds to believe that books and papers relating to any company, body corporate, managing director or manager of such company are liable to destroyed, mutilated, altered, falsified or secreted he may:

(a) enter the place where such books and papers are kept, and

(b) seize books and papers after allowing the company to take copies or extracts therefrom at its costs.

The books and papers shall be kept by the inspector in his custody until the conclusion of investigation and thereafter return to the person from whose custody they were seized. Before returning, the inspector may take copies or extracts or place identification marks on them or any part thereof.

The provisions of CrPC 1973 relating to searches or seizures shall apply mutatis mutandis to every search or seizure made under section 220.

**Inspector’s Report (Section 223)**

(i) **Interim and Final Report**

Depending on the nature of directions given by the Central Government, an inspector may submit interim reports and on conclusion of the investigation, he shall submit a final report.

(ii) **Report to be in writing**

Every report shall be in writing or printed or the Central Government may direct in this regards.

(iii) **Right to obtain copy of the report**

A person may obtain a copy of the report by making an application to the Central
Government.

(iv) **Authentication and Admissibility in legal proceedings**

The report may be authenticated by:

(a) the seal of the company whose affairs have been investigated; or

(b) a certificate of the public officer having custody of the report as provided in Section 76 of the Evidence Act, 1872.

The report shall be admissible in any legal proceeding as evidence of the matter contained in the report.

**Exception:**

Nothing in this section shall apply to a report referred to in Section 212.
CHAPTER - XII

NATIONAL COMPANY LAW TRIBUNAL (NCLT)

AND

NATIONAL COMPANY LAW APPELLATE TRIBUNAL (NCLAT)
National Company Law Tribunal (NCLT) and National Company Law Appellate Tribunal (NCLAT)

Earlier there were number of quasi-judicial forums and tribunals [Debts Recovery Tribunal (DRT), Securities Appellate Tribunal (SAT), Company Law Board (CLB), Board for Industrial and Financial Reconstruction (BIFR)] to provide speedier and specialized judicial settlement in the business affairs for dispensation of justice.

Later, the Companies (Second Amendment) Act, 2002 provided for a National Company Law Tribunal (NCLT) for combining the jurisdiction of various bodies administering the Companies Act, 1956.

Now, the Companies Act, 2013 provides for the constitution of NCLT & NCLAT. NCLT will be replacing the company law board, the board for industrial and financial reconstruction and the appellate authority for industrial and financial reconstruction. This new body will have judicial and technical members. NCLT is being set up to bring all lawsuits pertaining to companies under one body.

Following are the relevant sections that have been notified:

(i) Definitions- Section 407 of the Companies Act, 2013 provides the definitions of chairperson, judicial members, member, president, technical member constituting the appellate tribunal and tribunal.

<table>
<thead>
<tr>
<th>Members</th>
<th>Definitions</th>
</tr>
</thead>
<tbody>
<tr>
<td>Chairperson</td>
<td>the Chairperson of the Appellate Tribunal</td>
</tr>
<tr>
<td>Judicial Member</td>
<td>a member of the Tribunal or the Appellate Tribunal appointed as such and includes the President or the Chairperson</td>
</tr>
<tr>
<td>Member</td>
<td>a member, whether Judicial or Technical of the Tribunal or the Appellate Tribunal and includes the President or the Chairperson.</td>
</tr>
<tr>
<td>President</td>
<td>the President of the Tribunal</td>
</tr>
<tr>
<td>Technical Member</td>
<td>a member of the Tribunal or the Appellate Tribunal appointed as such</td>
</tr>
</tbody>
</table>
Point of comparison with respect to new law-

This section replaces the section 10 FD and 10 FR (Qualifications for appointment of President and Members) of the 1956 Act.

New Act, 2013 defines the various categories of persons (Chairperson, Members, and President) constituting the tribunal and appellate tribunal.

(ii) Constitution of National Company Law Tribunal (Section 408) - According to section 408 of the Companies Act, 2013, the Central Government shall, by notification, constitute, a Tribunal to be known as the National Company Law Tribunal consisting of a President and such number of (Judicial and Technical) members, as the Central Government may deem necessary, to be appointed by notification, to exercise and discharge such powers and functions as conferred on it by or under this Act or any other law for the time being in force.

Point of comparison with respect to new law-

This provision replaces Section 10FB (Constitution of National Company Law Tribunal and 10 FC Composition of tribunal) of the 1956 Act.

The new law contained in the 2013 Act, erased the ceiling on the appointment of the number of members from ‘not exceeding sixty two’ as given in the 1956 Act, to ‘as may deem necessary’.

(iii) Qualification of President and Members of Tribunal - According to section 409 of the Companies Act, 2013, the President shall be a person who is or has been a Judge of a High Court for five years.

A person shall not be qualified for appointment as a Judicial Member unless he is or has been—

(a) a judge of a High Court; or

(b) a District Judge for at least five years; or

(c) an advocate of a court for at least ten years.

A person shall not be qualified for appointment as a Technical Member unless he is or has been—

(a) a member of the Indian Corporate Law or Indian Legal Service out of which at least three years shall be in the pay scale of Joint Secretary to the Government of India or equivalent or above in that service; or
COMPANIES ACT, 2013

(b) in practice as a **chartered accountant**, or a cost accountant practice, or as a company secretary for at least fifteen years

(c) a person having special knowledge and experience, of not less than fifteen years, in various disciplines ,

(d) a presiding officer of a Labour Court, Tribunal or National Tribunal constituted under the Industrial Disputes Act, 1947 for at least five years.

**Point of comparison with respect to new law**-

- This provision replaces section 10 FD (Qualifications for appointment of President and Members) of the 1956 Act.

- The new Act, 2013 prescribes the qualification of a president of the tribunal that person should be a judge of a high court for the term of five years.

- Eligibility for judicial and technical member has been changed under the new Act of 2013.

**(iv) Constitution of Appellate Tribunal** - As per **section 410** of the Companies Act, 2013, the Central Government shall constitute, an Appellate Tribunal to be known as the National Company Law Appellate Tribunal consisting of a chairperson and number of Judicial and Technical Members, not exceeding eleven, to be appointed for hearing appeals against the orders of the Tribunal.

**Point of comparison with respect to new law**-

- This section replaces section 10 FR (Constitution of Appellate Tribunal) of the 1956 Act.

- New Act, 2013 increases the strength from maximum 3 members (including chairperson) to maximum 11.

**(v) Qualifications of Chairperson and members of Appellate Tribunal – Section 411** of the Companies Act, 2013 says that the chairperson shall be a person who is or has been a Judge of the Supreme Court or the Chief Justice of a High Court.

A Judicial Member shall be a person who is or has been a Judge of a High Court or is a Judicial Member of the Tribunal for five years.

A Technical Member shall be a person having special knowledge and experience, of not less than twenty-five years in various disciplines related to management, conduct of affairs, revival, rehabilitation and winding up of companies.

**Point of comparison with respect to new law**-

- This section replaces section 10 FR (Constitution of Appellate Tribunal) of the 1956 Act.

- New Act of 2013 prescribes qualification separately for both the judicial member and the technical member unlike the 1956 Act, where a common qualification was prescribed for the members.
(vi) Selection of Members of Tribunal and Appellate Tribunal— As per section 412 of the Companies Act, 2013, the President of the Tribunal and the chairperson and Judicial Members of the Appellate Tribunal, shall be appointed after consultation with the Chief Justice of India.

The Members of the Tribunal and the Technical Members of the Appellate Tribunal shall be appointed on the recommendation of a Selection Committee.

Committee consisting of—

(a) Chief Justice of India or his nominee—Chairperson;

(b) a senior Judge of the Supreme Court or a Chief Justice of High Court—Member;

(c) Secretary in the Ministry of Corporate Affairs—Member;

(d) Secretary in the Ministry of Law and Justice—Member; and

(e) Secretary in the Department of Financial Services in the Ministry of Finance—Member.

The Selection Committee shall determine its procedure for recommending persons for appointment.

No appointment of the Members of the Tribunal or the Appellate Tribunal shall be invalid merely by reason of any vacancy or any defect in the constitution of the Selection Committee.

**Point of comparison with respect to new law**-

- This section is the replacement of Section 10 FX (Selection Committee) of the 1956 Act.
- The new law provides that president, chairperson, judicial member of the tribunal shall be appointed after consultation with the chief justice of India.
- The 2013 Act, in addition to the existing members as provided under the 1956 Act, shall consist of a senior judge of the Supreme Court or Chief Justice of High Court as member.

(vii) Term of office of President, Chairperson and other Members— As per section 413 of the Companies Act, 2013, the President and every other Member of the Tribunal shall hold office for a term of five years from the date on which he enters upon his office, but shall be eligible for re-appointment for another term of five years.

A Member of the Tribunal shall hold office as such until he attains,— (a) in the case of the President, the age of sixty-seven years;

(b) in the case of any other Member, the age of sixty-five years.

**Exception:** A person who has not completed fifty years of age shall not be eligible for appointment as Member.
The chairperson or a Member of the Appellate Tribunal shall hold office for a term of five years from the date on which he enters upon his office, but shall be eligible for re-appointment for another term of five years.

A Member of the Appellate Tribunal shall hold office as such until he attains,—
(a) in the case of the Chairperson, the age of seventy years;
(b) in the case of any other Member, the age of sixty-seven years.

Exception: A person who has not completed fifty years of age shall not be eligible for appointment as Member.

Point of comparison with respect to new law-

1. This section 413 of the Act, 2013 replaces Section 10 FT and 10 FE (Term of office of Chairperson and Members, and President and members) of the 1956 Act.
2. New law increases the term of office to be held by the President and members of the NCLAT and the Chairperson and the member of NCLT from three years to five years.
3. The Act of 2013 allows Member to retain his lien with his parent cadre or Ministry or Department, while holding office for a period not exceeding one year.
4. The Act of 2013 further provides for the member of Tribunal and Appellate Tribunal an additional eligibility that a person who has not completed fifty years of age shall not be eligible for appointment as Member.

(viii) Salary, allowances and other terms and conditions of service of Members-According to section 414 of the Companies Act, 2013, the salary, allowances and other terms and conditions of service of the Members of the Tribunal and the Appellate Tribunal shall be such as may be prescribed:

Provided that neither the salary and allowances nor the other terms and conditions of service of the Members shall be varied to their disadvantage after their appointment.

Point of comparison with respect to new law -

1. Section 414 of the Act, 2013 replaces this Section 10 FG and 10 FW (Salary, allowances and other terms and conditions of service of President and other Members, chairperson and members) of the 1956 Act.
CHAPTER - XIII

COMPARITIVE PROVISIONS
OF COMPANIES ACT, 2013 & COMPANIES ACT, 1956)
**COMPARATIVE PROVISIONS OF COMPANIES ACT, 2013 AND COMPANIES ACT, 1956**

The Companies Act, 1956 (existing Act) contains 658 sections and XV schedules. The Companies Act, 2013 has 464 sections and 7 schedules.

The Act, has lesser sections as the Companies will be governed more through the rules which are yet to be prescribed.

The notes below are prepared based on the provisions of the Act. It may need to be amended/modified, deleted/added, as per the Rules as may be prescribed, as well as interpretation as it may emerge over a period of time.

<table>
<thead>
<tr>
<th>Points of Comparison</th>
<th>Companies Act, 2013</th>
<th>Companies Act, 1956</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>FORMATION OF COMPANY</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Minimum No. of persons required to form a company</td>
<td>One Person can form a One Person Company.</td>
<td>One Person can’t form a company.</td>
</tr>
<tr>
<td></td>
<td>Minimum 2 for a private company other than OPC.</td>
<td>Minimum 2 for a private company.</td>
</tr>
<tr>
<td></td>
<td>Minimum 7 for a public co.</td>
<td>Minimum 7 for a public co.</td>
</tr>
<tr>
<td><strong>Types of companies that can be formed</strong></td>
<td>15 Types of Companies.</td>
<td>10 Types as under:</td>
</tr>
<tr>
<td></td>
<td>In addition to the 10 types that could be formed under the 1956 Act as per Col. (3), following 5 new types of Cos. can be formed under 2013 Act:</td>
<td>• Public company limited by shares</td>
</tr>
<tr>
<td></td>
<td>• One Person company (OPC) limited by shares</td>
<td>• Public company limited by guarantee &amp; having share capital</td>
</tr>
<tr>
<td></td>
<td>• OPC limited by guarantee &amp; having share capital</td>
<td>• Public company limited by guarantee &amp; having no share capital</td>
</tr>
<tr>
<td></td>
<td>• OPC limited by guarantee having no share capital</td>
<td>• Public Unlimited company having share capital</td>
</tr>
<tr>
<td></td>
<td>• OPC Unlimited Company having share capital</td>
<td>• Private Company limited by shares</td>
</tr>
<tr>
<td><strong>Maximum number of members allowed in private company</strong></td>
<td>200 (for a private company other than OPC)</td>
<td>50</td>
</tr>
</tbody>
</table>
MEMORANDUM OF ASSOCIATION (MOA)

| Objects clause of Memorandum | Objects of the Company to be classified and stated in MOA as: (i) the objects for which the company is proposed to be incorporated and (ii) any matter considered necessary in furtherance thereof. | Objects of the Company should be classified and stated in MOA as: (i) the main objects of the company; (ii) Objects incidental or ancillary to the attainment of the main objects and (iii) other objects of the company. |

| Availability of name | Section 4(4) and 4(5)(i) of the 2013 Act incorporate the procedural aspects of application for availability of name of proposed company or proposed new name for existing company. | Procedural aspects of application for availability of name find no place in the 1956 Act. |

ARTICLES OF ASSOCIATION

| Entrenchment provisions in Articles | Articles may contain such provisions | No enabling provisions in 1956 Act for articles to contain entrenchment provisions. |

COMMENCEMENT OF BUSINESS

| Commencement of Business | A company having a share capital (whether public or private) shall not commence any business or exercise any borrowing powers unless:-(a) a declaration is filed by a director or with the Registrar that every subscriber to the memorandum has paid the value of the shares agreed to be taken by him and the paid up capital of the company is not less than Rs.5,00,000 in case of a public company and not less than Rs.1,00,000 in case of a private company on the date of making this declaration; and (b) The company has filed with the Registrar a verification of its registered office in such manner as may be prescribed; [See also section 12(2) of the 2013 Act] While section 149 of the 1956 Act applied only to public | A company having a share capital cannot commence business or exercise borrowing powers unless it has complied with formalities as under:- (A) where the company has issued a prospectus (i) the minimum number of shares which have to be paid for in cash have been allotted. (ii) Every director has paid on his shares an amount equal to what is payable on shares offered to public on application and allotment. (iii) No money is or may become refundable due to failure to apply for or obtain permission for listing from any recognized stock exchange/(s); and (iv) A statutory declaration by the secretary or one of the directors that the above requirements have been |

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companies having share capital, section 11 of the 2013 Act, unlike the 1956 Act, empowers ROC to initiate action for the removal of the name of the company from the register under Chapter XVIII if the following conditions are satisfied:

- no declaration has been filed with the Registrar as in Point (a) above within 180 days of the date of incorporation of the company and
- the Registrar has reasonable cause to believe that the company is not carrying on any business or operations.

(B) Where the company has not issued a prospectus

(i) It has filed with ROC a statement in lieu of prospectus at least 3 days before allotment; and

(ii) The conditions at (ii) and (iv) in (A) above are complied with.

**REGISTERED OFFICE**

| From which date, company must have a registered office? | On and from the 15th day of its incorporation. | From the earlier of the following two dates:
- The day on which it begins to carry on business,
- The thirtieth day after the date of its incorporation.

Consequences of not furnishing verification of registered office / notice of change in registered office

- The company and every officer who is in default shall be liable to a penalty of Rs.1000 for every day during which the default continues but not exceeding Rs.1,00,000
- A company having share capital shall not be entitled to commence any business or exercise any borrowing power until it is furnished.

| Notice of change of registered office address to ROC-Time Limit | To be given to ROC within 15 days of such change. | To be given to ROC within 30 days of such change.

Whether inclusion in the annual return of a company of a statement as to the address of its registered office is notice of situation of registered office / notice of change of registered office?

The 2013 Act is silent on this issue.

No. [See Section 147(3) of the 1956 Act].
### Alteration of the clause relating to the place of the registered office from one State to another

- The alteration procedure under the 2013 Act is lot more simplified and also time-bound. The Central Government shall dispose of the application within a period of 60 days.
- No requirement of the 2013 Act that shifting be for specified purposes. Provisions of section 17(1) of the 1956 Act have been omitted by the 2013 Act.
- No time limit prescribed for filing special resolution and certified copy of Central Government’s order confirming alteration under the 2013 Act. Only thing is that till documents are filed, alteration will not take effect.
- There was no time-limit under the 1956 Act within which Central Government was bound to dispose of the applications for shifting registered office from one state to another.
- Shifting registered office from one state to another should be for one of the specified purposes [See section 17(1) of the 1956 Act]
- Filing of a certified copy of the order of Central Government confirming the alteration along with a copy of memorandum as altered within 3 months from the date of the order with the Registrar of the State from which office is shifted and the Registrar of the State to which the office is to be shifted [See Sec. 18(1)(b) & Sec.18(3) of the 1956 Act]. Further, if the documents required to be filed with the Registrar are not filed within the period of 3 months as aforesaid, the alteration and the order of the Central Government and all proceedings connected therewith, shall, at the expiry of such period, would become void and inoperative. However, on sufficient cause shown, order could be revived.

### Where a company has changed its name or names during the last two years

Where a company has changed its name or names during the last two years it shall paint affix or print, as the case may be (on the outside of every office or place of business, business letters, bill heads, letter papers, hundis, promotes, etc.) along with its name, the former name or names so changed during the last two years.

No such requirement was there in the 1956 Act.
### ALTERATION OF NAME CLAUSE

<table>
<thead>
<tr>
<th>Voluntary rectification of name by a company where company’s name identical with or too nearly resembles the registered trade mark</th>
<th>Not allowed</th>
<th>Not allowed</th>
</tr>
</thead>
<tbody>
<tr>
<td>Where name of the company too nearly resembles or is identical with Registered trade mark – Time-limit for Central Government to issue direction to company for rectification of name</td>
<td>No time-limit in the 2013 Act for issue of direction by the Central Govt. to the company to rectify its name.</td>
<td>Under the 1956 Act there time-limit in the 2013 Act for issue of direction by the Central Govt. the company to rectify its name by passing an ordinary resolution. The time limit was within 12 months of first registration / registration by new name.</td>
</tr>
<tr>
<td>The time limit for making application by proprietor of registered trade mark to the Central Government seeking a direction to the company for rectification of name of the company where the name of the company resembles his trade-mark</td>
<td>Three years of incorporation or registration of the company with name resembling / identical to registered trade mark when this fact of such registration came to the notice of the proprietor of the trade mark- this is irrelevant for computing the limitation period of 3 years.</td>
<td>Five years from the date when this fact of registration of company with name identical to his registered trade mark came to the notice of the proprietor of registered trade mark.</td>
</tr>
</tbody>
</table>

### ALTERATION OF OBJECTS CLAUSE

<table>
<thead>
<tr>
<th>Purposes for which objects clause may be altered</th>
<th>No requirement in the 2013 Act that alteration of objects clause should be for specified purposes. Provisions of section 17(1) of the 1956 Act have been omitted by the 2013 Act.</th>
<th>Alteration of objects clause should be for one of the specified purposes [See section 17(1) of the 1956 Act].</th>
</tr>
</thead>
<tbody>
<tr>
<td>Where company has unutilized proceeds of public issue</td>
<td>New restrictions on alteration of objects clause of memorandum – Where company has any unutilized amount from proceeds of public issue where a company which has raised money form public through prospectus and still has any unutilized amount out of the money so raised, shall not change its objects is passed by the company and – (a) The details, as may be prescribed, of the notice in respect of such resolution to shareholders, shall also be published in the newspapers</td>
<td>No restrictions on alteration of objects clause where company has any unutilized proceeds of public issue.</td>
</tr>
</tbody>
</table>
(one English and one vernacular) in the city where the registered office of the company is situated and shall also be placed on the website of the company, if any, indicating clearly the justification for such change;

(b) The dissenting shareholders be given an opportunity to exit by the promoters and shareholders having control in accordance with regulations specified by SEBI.

<table>
<thead>
<tr>
<th>Registration of objects clause alteration by ROC</th>
<th>To be registered within 30 days from date of filing special resolution altering the objects clause.</th>
<th>No time-limit within which ROC to register the alteration.</th>
</tr>
</thead>
</table>

| ALTERATION OF ARTICLES |
|---|---|---|
| Conversion of Public Company into Private Company | Approval of Tribunal required. | No alteration which has the effect of converting public company into a private company, shall have effect unless such alteration has been approved by the Central Government (Power delegated to ROC). |

| SUBSIDIARY CO. NOT TO HOLD SHARES IN HOLDING CO. |
|---|---|---|
| Bar on subsidiary becoming member of holding company | The bar in section 18 of the 2013 Act applies only to companies and not to bodies corporate other than companies as the wording in section 18(1) is “No company shall, either by itself or through its nominees, hold any shares in its holding company” as opposed to section 42(1) of the 1956 Act which stated “a body corporate cannot be a member of a company which is its holding company” | Section 42 of the 1956 Act barred any body corporate from being a member of its holding company. |
## SERVICE OF DOCUMENTS

| Service of documents by electronic mode | Electronics mode for sending documents to the company recognized by the 2013 Act. The 2013 Act has also recognized "such electronic or other mode as may be prescribed" for service of documents to ROC. | Service by electronic mode not recognized by the 1956 Act. |
| Deemed service of notice of meeting on expiry of 48 hours | No provision of deemed service of notice under the 2013 Act. | Deemed service of notice of meeting on expiry of 48 hours when notice of meeting is sent by post. |
| Service of documents on member / ROC by speed post / Courier | Recognised mode of service ‘Courier’ defined. | Not a recognized mode of service. |
| Right of member to demand sending of documents to him by courier / speed post etc. | By paying fees fixed by general meeting, he can demand service by any mode – even if it is non-prescribed, e.g. Courier / Speed post etc. | The member could only demand in advance sending of documents to him by a certificate of posting or by registered post with or without acknowledgement due by pre-paying company’s expenses for these modes of services. |
| Service of documents on joint holders of shares / on persons entitled to share on death / insolvency of member | No provision in this regard in the 2013 Act. | Mode of service clearly spelt out in section 53 of the 1956 Act. |

## SHARE CAPITAL

<p>| Record of depository | Record of the depository is the prima facie evidence of the interest of the beneficial owner of shares held in depository form. | No provision in this regard. |
| When dividend of preference shares shall be deemed to be due | The 2013 Act omits interpretative provision of Explanation to section 87 of the 1956 Act. | Explanation to section 87 of the 1956 Act clarifies when dividend shall be deemed to be due on preference shares in respect of any period. |
| Variation of shareholders’ rights – where variation by one class of shareholders affects | Section 48 of the 2013 Act clarifies that if variation by one class of shareholders affects the | The 1956 Act contained no provisions in this regard. |
| <strong>the rights of any other class of shareholders</strong> | rights of any other class of shareholders, the consent of at least 75% of such other class of shareholders shall also be obtained and provisions of section 48 of the 2013 Act shall apply to such variation [Proviso to section 48(1) of the 2013 Act]. |
| <strong>Application of premium received on issue of shares</strong> | Section 52(3) of the 2013 Act intends to eliminate conflict with Accounting Standards by providing that such class of companies as may be prescribed whose financial statements comply with Accounting Standards prescribed for such class of companies, cannot utilize securities premium account for writing off preliminary expenses or for writing off the expenses or the commission paid or discount allowed on the issue of preference shares or debentures of the company for providing premium payable on redemption of preference shares or debentures. |
| <strong>Prohibition on issue of shares at discount</strong> | The 2013 Act has prohibited issue of shares (other than sweat equity shares) at a discount. Under the 2013 Act, only sweat equity shares can be issued at a discount. |
| <strong>Filing fees relief (ROC filing fees) and stamp duty relief for reissue of redeemed preference shares</strong> | No such relief allowed |
| <strong>Transfer and transmission of securities</strong> | Section 56(1) of the 2013 Act provides for transfer by company of such interest by execution of instrument of transfer and delivery of the same to company within 60 days from the date of execution for getting the transfer of interest, registered in No procedure or mechanism for transfer of interest of a member in a company having no share capital. Such interest is nevertheless transferable under the Transfer of Property Act, 1882 (general law of transfer of |</p>
<table>
<thead>
<tr>
<th><strong>Applicability of rights issue provisions</strong></th>
<th>Section 62 of the 2013 Act applies to all companies public as well as private</th>
<th>Section 81 of the 1956 Act applied only to public companies</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Period for which rights fares offer should be open</strong></td>
<td>Minimum 15 days maximum 30 days</td>
<td>Minimum 15 days no maximum 30 days</td>
</tr>
<tr>
<td><strong>Despatch of notice of rights offer through electronic mode</strong></td>
<td>Expressly allowed by 2013 Act</td>
<td>No provisions like this in the 1956 Act.</td>
</tr>
<tr>
<td><strong>Offer of further shares to others (other than existing equity shareholders)</strong></td>
<td>Special resolution required. Alternative of ordinary resolution and Central Govt. approval omitted by 2013 Act.</td>
<td>Special resolution required. Alternatively ordinary resolution and Central Government approval.</td>
</tr>
</tbody>
</table>
| **Issue of Bonus shares** | • No issue of bonus shares shall be made by capitalizing reserves created by the revaluation of assets.  
• This bar on issuing bonus shares out of revaluation reserves applies to all companies whether listed or unlisted.  
• Section 63 of the 2013 Act overcomes Supreme Court ruling in Bhagwati Developers | • The 1956 Act specifically permits utilization of reserve arising from revaluation of assets for purpose of issuing fully paid up bonus shares.  
• A company can issue bonus shares by capitalisation of revaluation reserve if the Articles of Association of the company so permits (Supreme Court’s decision in Bhagwati Developers v. Peerless General Finance & Investment Co.[2005]62 SCL 574).  
• In the above case, Supreme Court was concerned with an unlisted company. In case of listed companies, the SEBI (CDR) Regulations, 2009 prohibits issue of bonus shares by capitalization of revaluation reserves. The SEBI (OCDR) Regulations is not applicable to unlisted companies.  
• Thus, under the 1956 Act, unlisted company could use revaluation reserve for issuing bonus shares. |
## COMPANIES ACT, 2013

<table>
<thead>
<tr>
<th>Notice of redemption of redeemable preference share to ROC.</th>
<th>If company redeems any redeemable preference shares, notice has to be given to ROC with an altered memorandum.</th>
<th>Notice not required to be given to ROC.</th>
</tr>
</thead>
</table>

| Applicability of reduction of capital provisions to buyback | The provisions for reduction of capital shall not apply to buy-back of its own securities by a company. The intention seems to be that if buyback is made in strict compliance with section 68 of the 2013 Act provisions of section 66 of the 2013 Act regarding reduction of capital are not applicable to such buy-back. If buy back does not comply with section 68 of the 2013 Act, it is a reduction of capital requiring Tribunal’s Confirmation [Section 66(6) of the 2013 Act]. | No provisions in this regard. |

### REGISTERS

| Duplicate of foreign register | No requirement to maintain duplicate of the foreign register in India. | Section 158 of the 1956 Act required a duplicate of the foreign register to be maintained in India. |

### ANNUAL RETURN

<table>
<thead>
<tr>
<th>Whether full annual return / only changes to be filed every year</th>
<th>Full annual return to be filed every year [No provisions like section 159(1) of the 1956 Act of filing full annual return once in 5 years and changes in between] – All companies</th>
<th>The 1956 Act [See section 159(1) of the 1956 Act] provided that if any of the five immediately preceding annual returns has given the full particulars required as to past and present members and the shares held and transferred by them, the return in question may contain only changes in those particulars since the date of the AGM with reference to which the annual return in question is prepared.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Certification of annual return by CS in practice</td>
<td>The 2013 Act extends this requirement to unlisted companies having such paid-up capital and turnover as may be prescribed. – all</td>
<td>Only listed companies required to get annual return certified by a ‘secretary in whole-time practice’.</td>
</tr>
<tr>
<td><strong>Pvt. Companies may be covered</strong></td>
<td><strong>Extract of annual return in board’s report</strong></td>
<td>Extract of annual return in prescribed form to be given as part of Board’s report. – <strong>All companies</strong></td>
</tr>
<tr>
<td>---------------------------------</td>
<td>-----------------------------------------------</td>
<td>-------------------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td><strong>Punishment for company secretary certifying annual return</strong></td>
<td>Where a Company Secretary in practice certifies the annual return otherwise than in conformity with the requirements with the requirements of this clause or the rules made there under, such Company Secretary shall be punishable with fine which shall not be less than Rs.50,000 but which may extend to Rs.5,00,000. – <strong>All companies</strong></td>
<td>No penal provisions in the 1956 Act in this regard.</td>
</tr>
<tr>
<td><strong>Filing of changes in promoter’s stake by listed companies</strong></td>
<td>Every listed company shall file a return in the prescribed form with the ROC with respect to any change in the shareholding position of the promoters and top ten shareholders of such company. Return to be filed within 15 days of such change.</td>
<td>Not required under the 1956 Act.</td>
</tr>
</tbody>
</table>

**PLACE OF KEEPING REGISTERS, ETC.**

| **Place of keeping registers, copies of annual returns etc.** | The 2013 Act permits a company to keep these registers or copies of returns at any other place (i.e., place other than the registered office) in India (not necessarily within the city, town or village in which the registered office is situated) if following conditions above are fulfilled: (i) more than 10% of the total members entered in the register of members reside at that place; (ii) the keeping of registers or copies at that place is approved by a special resolution passed at a general meeting of the company; and (iii) the Registrar has been given a copy of the proposed special resolution in advance. | Section 163 of the 1956 Act permitted a company to keep these registers, copies of annual returns etc. at any other place (i.e., place other than the registered office) within the city, town or village in which the registered office is situated if the same is (i) approved by a special resolution passed at a general meeting of the company and (ii) the Registrar has been given a copy of the proposed special resolution in advance. |

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**ERUDITE ACADEMY**

Contact: 0712-6888005 / 9503031788
### COMPANIES ACT, 2013

#### INSPECTION OF REGISTERS, ETC.

| Inspection of registers, copies of returns etc. | The 2013 Act does not empower the company to restrict the right to inspect registers, copies of indices, returns, etc. | Section 163 of the 1956 Act provided that the right of inspection of registers of members, debenture holders etc. shall be subject to such reasonable restrictions, as the company may impose, so that not less than 2 hours in each day are allowed for inspection. |

#### ANNUAL GENERAL MEETING

| Day, venue and time for AGMs | • Section 96(2) of the 2013 Act provides that every annual general meeting shall be called during business hours, that is, between 9 a.m. and 6 p.m. on any day that is not a National Holiday.  
• Thus, section 96(2) clarifies what is meant by ‘business hours’ – i.e., between 9 a.m. and 6 p.m. The term ‘business hours’ was not defined in the 1956 Act. | Section 166(2) of the 1956 Act required that every AGM should be called a time during business hours, on a day that is not a Public Holiday. [Section 2(38) of the 1956 Act defined public holiday]. |

#### NOTICE FOR MEETING

<p>| Giving notice for general meetings in electronic mode | Section 101 of the 2013 Act permits giving notice of the general meetings of the company through electronic mode. | No express provision permitting notice to be given in electronic mode. |
| Consent of members to shorter notice for general meetings | Consent for shorter notice is required from not less than 95% of the members entitled to vote at such meeting (irrespective of whether it is AGM or EGM) – All companies | Consent for shorter notice is (i.e. less than 21 clear days notice) was required to be given by all the members entitled to vote thereat (for AGM) and by not less than 95% of the members entitled to vote at such meeting (for meetings other than AGM). |
| Mode of consent of members to shorter notice for general meetings | The 2013 Act requires that consent for shorter notice should be given in writing or by electronic mode. – All companies | The 1956 Act did not specify the mode in which consent for shorter notice for the meeting (i.e. less than 21 clear days notice) should be accorded. |
| Definition of ‘material facts’ in the context of Explanatory Statement annexed to Notice | Section 102 of the 2013 Act clarifies that material facts are those that may enable members to understand the meaning. | Section 173 of the 1956 Act did not clarify what facts are ‘material facts’. |</p>
<table>
<thead>
<tr>
<th><strong>COMPANIES ACT, 2013</strong></th>
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<tbody>
<tr>
<td><strong>scope and implications of the items of business and to take decision thereon. – All companies</strong></td>
<td></td>
</tr>
<tr>
<td><strong>Liability to compensate the company for No-disclosure or insufficient in Explanatory Statement annexed to Notice</strong></td>
<td>Where as a result of the non-disclosure or insufficient disclosure in any Explanatory Statement, being made by a director, manager, if any, or other key managerial personnel, any benefit may accrue to such director, manager or other key managerial personnel or his relative. This director, manager or other key managerial personnel, as the case may be, 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. – All companies</td>
</tr>
<tr>
<td><strong>When disclosure of interest necessary in Explanatory Statement</strong></td>
<td>Section 102 of the 2013 Act provides that where any item of special business relates to or affects any other company, the extent of shareholding interest in that other company of every director, manager, if any, and of every other key managerial personnel of the first mentioned company shall be disclosed in the Explanatory Statement if the extent of such shareholding is 2% or more of the paid-up share capital of that other company. – All companies</td>
</tr>
</tbody>
</table>

**QUORUM FOR MEETINGS**

<table>
<thead>
<tr>
<th><strong>Quorum for general meetings for public companies</strong></th>
<th>Section 102 of the 2013 Act fixes quorum for public companies based on the number of members of the company as under:</th>
</tr>
</thead>
<tbody>
<tr>
<td>5 members personally present if the number of</td>
<td>Quorum requirements for public companies for general meetings are 5 members personally present unless the articles stipulate a larger number.</td>
</tr>
</tbody>
</table>
### COMPANIES ACT, 2013

<table>
<thead>
<tr>
<th>Quorum not present within half-an-hour</th>
<th>These provisions apply under 2013 Act regardless of what articles of the company provide. It is further provided that in case of an adjournment or of a change of day, time or place of adjourned meeting (which was adjourned inquorate), the company shall give not less than 3 days’ notice to the members either individually or by press announcement.</th>
<th>Section 174(4)/(5) of the 1956 Act provided as to what would happen if quorum not present within half-an-hour. These provisions applied unless articles applied provided otherwise.</th>
</tr>
</thead>
</table>

#### PROXY

<table>
<thead>
<tr>
<th>How many members can a proxy act for?</th>
<th>Section 105 of the 2013 Act provides that a person appointed as proxy shall act on behalf of such number of members not exceeding 50 and such number of shares as may be prescribed.</th>
<th>No such restriction in 1956 Act.</th>
</tr>
</thead>
<tbody>
<tr>
<td>A class or classes of companies whose members shall not be entitled to appoint proxies</td>
<td>Section 105 of the 2013 Act also provides that the Central Govt. may prescribe a class or classes of companies whose members shall not be entitled to appoint proxies.</td>
<td>No such restriction in 1956 Act.</td>
</tr>
<tr>
<td>Restrictions on voting rights</td>
<td>Under the 2013 Act, the restriction stated under the 1956 Act shall not prohibit any member</td>
<td>The restriction that a company shall not prohibit any member</td>
</tr>
</tbody>
</table>
### COMPANIES ACT, 2013

<table>
<thead>
<tr>
<th>Poll</th>
<th>From exercising his voting right on any other ground other than non-payment of calls or lien on shares, applied only to public companies under section 182 of the 1956 Act.</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>Person entitled to demand Poll in case of a public company having share capital</th>
<th>The members present in person or by proxy and having not less than 10% of the total voting power or holding shares on which an aggregate sum of not less than Rs.5,00,000 or such higher amount as prescribed has been paid up.</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>Person entitled to demand Poll in case of a private company having share capital</th>
<th>The members present in person or by proxy and having not less than 10% of the total voting power or holding shares on which an aggregate sum of not less than Rs.5,00,000 or such higher amount as prescribed has been paid up. - All Pvt. Companies</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>Postal Ballot</th>
<th>Applicable to all companies.</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>Postal Ballot</th>
<th>Applicable only to listed companies.</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>Resolution</th>
<th>To be counted for determining whether ordinary or special resolution has been passed.</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>Resolution</th>
<th>The 1956 Act did not expressly allow electronic voting.</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>Special Notice</th>
<th>Where any resolution requires special notice, notice of the intention to move such resolution shall be given to the company by such number of member holding not less than 1% of total voting power or holding shares on which such aggregate sum not exceeding Rs.5,00,000, as may be prescribed, has been paid up.</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>Special Notice</th>
<th>No requirements that notice should be given by any specified number of members.</th>
</tr>
</thead>
</table>
### Special Notice of a resolution – Length of notice

| No stipulation on how many days before meeting special notice is to be given. | 14 clear days notice before the day of meeting. |

### SECRETARIAL STANDARDS

| Secretarial Standards | Every company shall observe such secretarial standards with respect to general and Board meetings as may be specified by the Institute of Company Secretaries of India and approved as such by the Central Government. - **All companies** | The 1956 Act did not recognize secretarial standards. Secretarial standards were not mandatory under the 1956 Act. |

### MINUTES

| Specific penalty / punishment for tampering of minutes | Section 118(12) of the 2013 Act provides that if a person is found guilty of tampering with the minutes of the proceedings of meeting he shall be punishable with imprisonment for a term which may extend to two years and with fine which shall not be less than Rs.25,000 but which may extend to Rs.1,00,000. - **All companies** | No specific punishment for tampering of minutes |

### OTHERS

| Statement circulated at general meetings by members on their requisition | Allowed. 1000 words limitation for statement omitted by the 2013 Act. | Allowed at GMs – Statement not to exceed 1000 words. |
| Whether dividend declaration / payment barred if company is in default of repayment of deposits? | Yes. A company which fails to comply with section 73 and 74 of the 2013 Act (repayment of deposits accepted before commencement of the Act) shall not, so long as such failure continues, declare any dividend on its equity shares. | No such bar in the 1956 Act. |
| Dividend only from free reserves | Third proviso to section 123(1) of the 2013 Act provides that no dividend shall be declared or paid by a company from its reserves other than free reserves. - **All companies** | No express provisions in this regard in the 1956 Act. |
### Whether past losses required to be set off before declaring dividend

<table>
<thead>
<tr>
<th>Requirement</th>
<th>2013 Act</th>
<th>1956 Act</th>
</tr>
</thead>
<tbody>
<tr>
<td>Not required. No express provisions along the lines of clause (b) of the first proviso to section 205(1) to the 1956 Act.</td>
<td>Yes. Clause (b) of the first proviso to section 205(1) to the 1956 Act requires that company must provide, in respect of each previous financial year (after providing for depreciation) or the amount of depreciation provided, whichever is lower.</td>
<td></td>
</tr>
</tbody>
</table>

### Power of Central Government to permit in public interest declaration of dividend without providing depreciation

<table>
<thead>
<tr>
<th>Requirement</th>
<th>2013 Act</th>
<th>1956 Act</th>
</tr>
</thead>
<tbody>
<tr>
<td>No such power conferred on the Central Government by the 2013 Act.</td>
<td>The Central Government may, in the public interest allow any company to pay dividend for any financial year out of the profits for that year out of any previous financial year or years without providing for depreciation. [See clause (b) of the first proviso to section 205(1) of the 1956 Act]</td>
<td></td>
</tr>
</tbody>
</table>

### Whether transfer to reserves compulsory?

<table>
<thead>
<tr>
<th>Requirement</th>
<th>2013 Act</th>
<th>1956 Act</th>
</tr>
</thead>
<tbody>
<tr>
<td>No. A company may, before the declaration of any dividend in any financial year, transfer of its profits for that financial year as it may consider appropriate to the reserves of the company. - All companies</td>
<td>Yes. Where the company proposes to declare dividend for any financial year (at a rate exceeding 10% of the paid-up capital) out of the profits for that year, the company has to transfer to profits (not exceeding 10%) as prescribed in the Companies (Transfer of Profit to Reserves) Rules 1975.</td>
<td></td>
</tr>
</tbody>
</table>

### Payment of dividend through electronic mode to registered shareholder

<table>
<thead>
<tr>
<th>Requirement</th>
<th>2013 Act</th>
<th>1956 Act</th>
</tr>
</thead>
<tbody>
<tr>
<td>Expressly allowed.</td>
<td>No express provisions allowing this.</td>
<td></td>
</tr>
</tbody>
</table>

### Unpaid Dividend Account

<table>
<thead>
<tr>
<th>Requirement</th>
<th>2013 Act</th>
<th>1956 Act</th>
</tr>
</thead>
<tbody>
<tr>
<td>Section 124(6) of the 2013 Act goes a step further than section 205C of the 1956 Act and provides that all shares in respect of which unpaid or unclaimed dividend has been transferred to the Investor Education and Protection Fund shall also be transferred by the company in the name of Investor Education and Protection Fund along with a statement containing such details as may be prescribed.</td>
<td>Section 205C of the 1956 Act provides that amounts in the unpaid accounts of companies which have remained unclaimed and unpaid for a period of seven years from the date they became due for payment shall be by a company to the Investor Education and Protection Fund.</td>
<td></td>
</tr>
</tbody>
</table>
Any claimant of shares transfer of shares from Investor Education and Protection Fund in accordance with submission of such documents as may be prescribed.

Right of Investor to make a claim to Investor Education and Protection Fund

Section 125 of the 2013 Act provides that claim of an investor over a dividend or benefit from a security not claimed for more than 7 years would not be extinguished.

In other words, any person claiming to be entitled to such dividend or money may apply to the authority administering the fund for payment.

CORRESPONDING TO SCHEDULE XIV OF 1956 ACT

The following are the differences between Schedule II of 2013 Act and Schedule XIV of 1956 Act:

<table>
<thead>
<tr>
<th>Sr.No.</th>
<th>Schedule II of the 2013 Act</th>
<th>Schedule XIV of the 1956 Act</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Schedule II contains only useful lives of tangible assets and does not prescribe depreciation rates.</td>
<td>Schedule XIV contained rates of depreciation of tangible assets.</td>
</tr>
</tbody>
</table>

ACCOUNTS

<table>
<thead>
<tr>
<th>Points of comparison</th>
<th>Companies Act, 2013</th>
<th>Companies Act, 1956</th>
</tr>
</thead>
<tbody>
<tr>
<td>(1)</td>
<td>(2)</td>
<td>(3)</td>
</tr>
<tr>
<td>Books of account in electronic mode</td>
<td>Company may keep such books of accounts or other relevant papers in electronic mode in such manner as may be prescribed. <strong>All companies</strong></td>
<td>No provisions in the 1956 Act enabling company to keep books of accounts in electronic mode.</td>
</tr>
<tr>
<td>Consolidated financial statements</td>
<td>Mandatory if company has one or more subsidiaries or associates or joint ventures</td>
<td>Not mandatory. No provisions in this regard in the 1956 Act.</td>
</tr>
<tr>
<td>Requirements to attach subsidiary company’s accounts etc. holding</td>
<td>Requirements omitted.</td>
<td>If a company was a holding company, it was required to attach to its balance sheet a statement showing holding</td>
</tr>
<tr>
<td>company’s accounts</td>
<td>company’s interest in subsidiary [See section 212(5) of the 1956 Act].</td>
<td></td>
</tr>
<tr>
<td>-------------------</td>
<td>---------------------------------------------------------------</td>
<td></td>
</tr>
</tbody>
</table>
| Compulsory placing of accounts on a company’s website | • A listed company shall also place its financial statements including consolidated financial statements and all others documents required to be attached or annexed thereto, on its website, which is maintained by or on behalf of the company.  
• Every company having a subsidiary or subsidiaries shall, -  
  (a) Place separate audited accounts in respect of each of its subsidiary on its website, if any;  
  (b) Provide a copy of separate audited financial statements in respect of each of its subsidiary, to any shareholder of the company who asks for it. |
|                   | No required by the 1956 Act. |

### REPORT OF BOARD OF DIRECTORS – All Companies

<table>
<thead>
<tr>
<th>Disclosures in Board’s Report</th>
<th>More disclosures required by the 2013 Act. Additional / New disclosures required in report of the Board by the 2013 Act are as under –</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>• Extract of annual return,</td>
</tr>
<tr>
<td></td>
<td>• Number of meetings of the board.</td>
</tr>
<tr>
<td></td>
<td>• A statement on declaration given by independent directors [See Section 149(6) of the 2013 Act].</td>
</tr>
<tr>
<td></td>
<td>• Company’s policy on directors’ appointment and remuneration including criteria for determining qualifications, positive attributes, independence of a director and other matters [See section 178(1) / 178(3) of the 2013 Act.</td>
</tr>
<tr>
<td></td>
<td>• Explanations or comments by the Board on every</td>
</tr>
</tbody>
</table>

| | Much disclosures required by the 1956 act in the Board of Directors Report. |
qualification, reservation or adverse remark or disclaimer made by the Company Secretary in practice in his secretarial audit report.

- Particulars of loans, guarantees or investments [See section 186 of the 2013 Act].
- Particulars of contracts or arrangements [See section 188(1) of the 2013 Act].
- A statement indicating development and implementation of a risk management policy for the company including identification therein of elements of risk, if any, which in the opinion of the Board may threaten the existence of the company.
- Details about the policy developed and implemented by the company on Corporate Social Responsibility initiatives taken during the year.
- In the case of a listed company and every other public company having such paid-up capital as may be prescribed, a statement in which formal evaluation has been made by the Board of its own performance and that of its committees and individual directors.
- Such other matters as may be prescribed.

<table>
<thead>
<tr>
<th>Directors’ Responsibility Statement (DRS) in Board’s report</th>
<th>The Directors’ Responsibility Statement in the report of the Board of Directors shall contain the following additional declarations-</th>
</tr>
</thead>
<tbody>
<tr>
<td>(a) The directors, in the case of a listed company, had laid down internal financial controls to be followed by the company and that such controls were followed during the year.</td>
<td>Declarations regarding internal financial controls and legal compliance system not required in DRS.</td>
</tr>
</tbody>
</table>
COMPANIES ACT, 2013

| Internal Financial Controls | The directors had devised proper systems to ensure compliance with the provisions of this Act and rules made thereunder and that such systems were adequate and operating effectively. All companies. |

**CORPORATE SOCIAL RESPONSIBILITY**

<table>
<thead>
<tr>
<th>Corporate Social Responsibility (CSR)</th>
<th>In every financial year, CSR spends of at least 2% of the average net profits the company made during the 3 immediately preceding financial year is mandatory for every company satisfying any of the following criteria:</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>• Having net worth of Rs.500 crores or more, or</td>
</tr>
<tr>
<td></td>
<td>• Having turnover of Rs.1,000 crores or more, or</td>
</tr>
<tr>
<td></td>
<td>• Having net profit of Rs.5 crores or more,</td>
</tr>
<tr>
<td></td>
<td>No provisions regarding CSR in the 1956 Act.</td>
</tr>
</tbody>
</table>

**INTERNAL AUDIT**

<table>
<thead>
<tr>
<th>Compulsory internal audit</th>
<th>Section 138 of the 2013 Act provides as under:</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>• Such class or description of companies as may be prescribed shall be required to appoint an internal auditor</td>
</tr>
<tr>
<td></td>
<td>No provisions in the 1956 Act as regards mandatory internal audit.</td>
</tr>
</tbody>
</table>
### Appointment of Auditors

| Appointment of Auditors of Companies other than Govt. Companies at AGM for 5 years tenure – (All companies) | • Appointment of auditors for 5 years tenure subject to ratification at every annual general meeting.  
• Where at any annual general meeting, no auditor is appointed, the existing auditor shall continue to be the auditor of the company. | • No provisions in the 1956 Act for 5 years tenure for auditors.  
• No provisions in the 1956 Act for existing auditor to continue in default of appointment / reappointment at AGM. |
<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Special resolution for appointment of auditors</td>
<td>Requirement of special resolution for appointment of auditor dropped [See section 224A of the 1956 Act omitted].</td>
<td>Section 224A of the 1956 Act: Auditor not to be appointed except with the approval of the company by special resolution in certain cases.</td>
</tr>
<tr>
<td>Compulsory rotation of auditors</td>
<td>Applicable to listed companies &amp; classes of companies as may be prescribed. Individual auditor to be rotated after 1 term of 5 years Audit Firm to be rotated after 2 terms of 5 years.</td>
<td>No requirement for this in the 1956 Act.</td>
</tr>
</tbody>
</table>

### Auditor-Qualifications & Disqualifications

| Auditor’s disqualifications – All companies | The list of disqualifications as auditors under section 141 of the 2013 Act is longer than that under section 226(3) of the 1956 Act. The following are the new disqualifications that were not there in 1956 Act:  
• A person or a firm who has | Much narrower list of disqualifications under the 1956 Act compared to the 2013 Act. |
<table>
<thead>
<tr>
<th>Right &amp; Duties of Auditors</th>
<th>Details</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Indebtedness of relative of auditor – All companies</strong></td>
<td>Even if relative or partner of a person is indebted to the company, or its subsidiary, or its holding or associate company or a subsidiary of such holding company, the said person shall be disqualified from being appointed as auditor of a company.</td>
</tr>
<tr>
<td><strong>Indebtedness to an associate company – All companies</strong></td>
<td>Disqualification for auditor</td>
</tr>
<tr>
<td><strong>Auditor’s duty to comment regarding internal financial controls – All companies</strong></td>
<td>The auditor’s report to state whether company has adequate internal financial controls system in place and operating effectiveness of such controls.</td>
</tr>
<tr>
<td><strong>Duty of auditor to report fraud to Central Govt. – All companies</strong></td>
<td>If an auditor of a company, in the course of the performance of his duties as auditor, has reason to believe that an offence involving fraud is being or has been committed against the company by officers or employees of the company, he shall immediately report the matter to the Central Government within such time.</td>
</tr>
</tbody>
</table>
and in such manner as may be prescribed.

- No duty to which an auditor of a company may be subject to shall be regarded as having been contravened by reason of his reporting the matter as above if it is done in good faith.

- These provisions shall mutatis mutandis apply to a –
  (a) The Cost Accountant in practice conducting cost audit under section 148 of the 2013 Act; or
  (b) The Company Secretary in practice

- If any auditor, cost accountant or Company Secretary in practice do not report fraud committed or being committed as above, he shall be punishable with fine which shall not be less than one lakh rupees but which may extend to twenty-five lakh rupees.

<table>
<thead>
<tr>
<th>Auditor not to render certain services-All companies</th>
<th>Section 144 of the 2013 Act specifies certain services not to be rendered by auditor to company or to its holding company or subsidiary.</th>
<th>No such provisions in the 1956 Act.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Auditor’s attendance general meetings</td>
<td>Auditor shall, unless otherwise exempted by the company, attend any general meeting:</td>
<td></td>
</tr>
<tr>
<td></td>
<td>(i) By himself or</td>
<td></td>
</tr>
<tr>
<td></td>
<td>(ii) Through his authorized representative who is qualified to be an auditor.</td>
<td></td>
</tr>
<tr>
<td>COST AUDIT</td>
<td></td>
<td>Auditors attendance at general meetings – Optional, not compulsory</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Companies required to maintain cost records</th>
<th></th>
<th>Section 209(1)(d) of the 1956 Act empowered the Central Government to prescribe cost records (i.e. particulars relating to the utilization of material or labour or to such other items of cost) for any class of companies engaged in the production processing, manufacturing or mining activities.</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Section 148 of the 2013 Act empowers the Central Government to prescribe cost records for any class or classes of companies engaged in prescribed services.</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Unlike 1956 Act, the 2013 Act also provides that before prescribing cost records in respect of any class of companies regulated under</td>
<td></td>
</tr>
</tbody>
</table>
COMPANIES ACT, 2013

<table>
<thead>
<tr>
<th>Previous approval of Central Government for the Appointment of cost auditor</th>
<th>The previous approval of Central Government is no longer required for appointment of cost auditor as section 148 of the 2013 Act dispenses with this requirement.</th>
<th>Previous approval of Central Government required for appointment of cost auditor</th>
</tr>
</thead>
<tbody>
<tr>
<td>Remuneration of cost auditor</td>
<td>Remuneration of cost auditor to be determined by members of the company in such manner as may be prescribed.</td>
<td>Determined by the Board of Directors. There was no requirement that it should be determined by members.</td>
</tr>
</tbody>
</table>

**APPOINTMENT OF DIRECTORS**

<table>
<thead>
<tr>
<th>Compulsory appointment of woman director</th>
<th>Such class or classes of companies as may be prescribed shall have a woman director</th>
<th>No provisions regarding this in the 1956 Act.</th>
</tr>
</thead>
<tbody>
<tr>
<td>At least 1 director who stayed in India for 182 days or more</td>
<td>Every company shall have at least one of the directors who has stayed in India for 182 days or more in the previous calendar year.</td>
<td>No provisions regarding this in the 1956 Act.</td>
</tr>
<tr>
<td>Independent director</td>
<td>Listed public company shall have at least one-third of the total number of directors as independent directors. The Central Government may prescribe the minimum number of independent directors in case of any class or classes of public companies. An independent director shall not be entitled to stock options. He shall not be entitled to any remuneration other than sitting fee, reimbursement of expenses for participation in the Board and other meetings and profit related commission as may be approved by the members.</td>
<td>No such requirement in the 1956 Act.</td>
</tr>
<tr>
<td>Maximum number of directors</td>
<td>Maximum number of directors in public company as well as private companies is 15. A</td>
<td>No such requirement for private company.</td>
</tr>
<tr>
<td>Topic</td>
<td>Description</td>
<td></td>
</tr>
<tr>
<td>----------------------------------------------------------------------</td>
<td>-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------</td>
<td></td>
</tr>
</tbody>
</table>
| Limitation of liability of non-executive directors and independent director | Notwithstanding anything contained in this Act, -  
(i) An independent director,  
(ii) A non-executive director not being a promoter or key managerial personnel,  
Shall be held liable, only in respect of such acts of omission or commission 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.                                                                 |
| Declaration by person proposed to be appointed as director-All companies | Every person proposed to be appointed as a director shall furnish:  
(i) His DIN and  
(ii) A declaration that he is not disqualified to become a director under this Act.                                                                                                                                                                                                                                                                                                                                                 |
| Board’s opinion as to whether Independent Directors fulfil the conditions specified for appointment as Independent Directors | In the case of appointment of an independent director (ID), the explanatory statement attached to notice of meeting shall state that in the opinion of the Board he fulfils the conditions specified in this Act for such an appointment.                                                                                                                                                                                                                                                                                     |
| Determining the 2 / 3rds of directors of public co. liable to retire by rotation | For determining the “Not less than two-thirds of the total number of directors of a public company” liable to retire by rotation, “Total number of |
**COMPANIES ACT, 2013**

<table>
<thead>
<tr>
<th>Time limit for furnishing DIN to ROC-All companies</th>
<th>15 days of receipt of information from the director of his DIN.</th>
<th>One week of receipt of intimation from the directors of his DIN.</th>
</tr>
</thead>
</table>
| **Right of persons other than retiring directors to stand for directorship – All companies** | • Section 160 of the 2013 Act applies to all companies  
• Section 160 provides for refund of deposit even if candidate gets more than 20% of total votes cast.  
• Under section 160 deposit is Rs.1,00,000 or such higher amount prescribed under the Rules. | • Section 257 of the 1956 Act was applicable only to public companies  
• Section 257 provided for refund of deposit only if candidate got elected as a director.  
• The deposit under section 257 was Rs.500 |
| **Alternate Directors** | • Section 161 of the 2013 Act provides that Board of Directors may, appoint a person, to act as an alternate director for a director during his absence from India for a period of not less than three months.  
• Section 161 requires that person appointed as alternate director should not be a person holding any alternate directorship for any other director in the company. The 1956 Act contained no such requirement.  
• Section 161 further provides that a person who is proposed to be appointed as an alternate director for an independent director should be qualified to be as an Independent director under the provisions of this Act. There was no such requirement in the 1956 Act. | • Section 313 of the 1956 Act empowered the Board of Directors to appoint a person, to act as an alternate director for a director (‘the original director’) during his absence for a period of not less than three months from the State in which meetings of the Board are ordinarily held. |
| **Nominee Directors** | • Section 161 of the 2013 Act provides that subject to the articles, the Board may, appoint any person as a director nominated by an institution in pursuance of the provisions of any law for the time being in force or of any | No such provision in the 1956 Act. |
## COMPANIES ACT, 2013

<table>
<thead>
<tr>
<th>Additional Directors – All companies</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Section 162 of 2013 Act</strong></td>
<td>provides that the Board of Directors shall not appoint a person who fails to get appointed as a director in a general meeting as an additional director.</td>
</tr>
<tr>
<td><strong>No such provision</strong></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Appointment of directors to be voted individually – All companies</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Section 162 of 2013 Act</strong></td>
<td>applies to all companies.</td>
</tr>
<tr>
<td><strong>Section 263 of the 1956 Act</strong></td>
<td>provided that where a resolution for appointment of two or more persons as Directors is so moved and is passed, no provision for the automatic re-appointment of the directors retiring by rotation in default of any other appointment shall apply. The 2013 Act omits this provision.</td>
</tr>
<tr>
<td><strong>Section 263 of the 1956 Act</strong></td>
<td>applied only to public companies.</td>
</tr>
</tbody>
</table>

### DISQUALIFICATIONS OF DIRECTORS

<table>
<thead>
<tr>
<th>Disqualifications for appointment as director–All companies</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>The 2013 Act permanently debars from directorship of a company any person who is convicted of any offence and sentenced to imprisonment of 7 years or more.</strong></td>
<td></td>
</tr>
<tr>
<td><strong>Section 164 of the 2013 Act</strong></td>
<td>contains the following two new grounds for disqualifying a person from directorships of companies which were not there in section 274 of the 1956 Act.</td>
</tr>
<tr>
<td>o he has been convicted of the offence dealing with related party transactions at any time during the last preceding five years;</td>
<td></td>
</tr>
<tr>
<td>o he has not obtained Director Identification Number.</td>
<td></td>
</tr>
<tr>
<td><strong>No such provision in the 1956 Act.</strong></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Disqualifications of director if company commits specified defaults – All companies</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Under section 164(2) of the 2013 Act, it does not matter whether the defaulting company is a public company or not.</strong></td>
<td></td>
</tr>
<tr>
<td><strong>Under s.164(2), if co. fails to</strong></td>
<td></td>
</tr>
<tr>
<td><strong>Under the 1956 Act, a person was disqualified from directorships if he was a director of a defaulting public company which had committed either of</strong></td>
<td></td>
</tr>
<tr>
<td><strong>Exclusion of certain directorships for computing limit on maximum directorships – All companies</strong></td>
<td>The 2013 Act omits these exclusions.</td>
</tr>
</tbody>
</table>
| **Limit on maximum number of directorships – All companies** | • Maximum number of directorships that an individual can hold including alternate directorships is 20 of which not more than 10 can be of public companies.  
• General meeting by special resolution can specify lesser number than 20 / 10 companies. No such provision in 1956 Act. | 15 directorships. |

### Duties of Director

| Duties of directors – All companies | Spelt out in section 166 of the 2013 Act based on case laws. | Not spelt out |

### Vacation of Office of Director

| Vacation of office of director if he absents himself at Board meetings –PL/GPAEL/CBC | • Section 167 of the 2013 Act provides that if a director absents himself from all the meetings of the Board of Directors held during a period of 12 months with or without seeking leave of absence of the Board, his office shall become vacant.  
• Section 167 of the 2013 Act is much more liberal in the sense that it requires director to attend at least one board meeting during a period of 12 months  
• However, section 283 of the 1956 Act authorized the Board to sanction a director’s absence for any period of time which is not possible now under section 167 of the 1956 Act. | Section 283 of the 1956 Act provided that a director’s office shall become vacant if he absents himself from three consecutive meetings of the Board of directors, or from all meetings of the Board for a continuous period of three months, whichever is longer, without obtaining leave of absence from the board. |
Where all directors of company vacate their offices

<table>
<thead>
<tr>
<th>2013 Act.</th>
<th>The 1956 Act never expressly provides for this situation.</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Section 167 of the 2013 Act provides that where all the directors of a company vacate their offices, the promoter or, in his absence, the Central Govt. shall appoint the required number of directors who shall hold office till the directors are appointed by the company in the general meeting.</td>
<td></td>
</tr>
</tbody>
</table>

RESIGNATION OF DIRECTORS

<table>
<thead>
<tr>
<th>Resignation of director</th>
<th>Section 168 of the 2013 Act deals with resignation of directors.</th>
<th>No provisions covering director’s resignation.</th>
</tr>
</thead>
</table>

REGISTER ETC., OF DIRECTORS

| Return containing such particulars and documents as may be prescribed, of the directors and the key managerial personnel – All companies | Section 170 of the 2013 Act requires that a return containing such particulars and documents as may be prescribed, of the directors and the key managerial personnel shall be filed with the Registrar within 30 days from the appointment of every director and key managerial personnel, as the case may be, and within 30 days of any change taking place. | No requirement to file such return. |

MEETING OF BOARD

| Participation of directors in board meetings through video conferencing | The 2013 Act allows participation of directors in board meetings through video conferencing or other audio visual means, as may be prescribed. [Such participation to count for quorum purposes – See Section 174 of the 2013 Act]. | No enabling provision permitting such participation. |

<p>| Notice for Board Meetings – All companies | • Not less than 7 days notice to be given for board meetings. • Shorter notice may be given for board meeting to transact urgent business provided at least one independent director, if any, shall be present at the meeting. • If independent directors are absent from such Board | Length of notice period not mentioned. |</p>
<table>
<thead>
<tr>
<th>Section</th>
<th>Text</th>
<th>Notes</th>
</tr>
</thead>
<tbody>
<tr>
<td>COMPANIES ACT, 2013</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Notice for Board meetings by electronic mode means – All companies</strong></td>
<td>Notice for board meetings may be given by electronic means.</td>
<td>Not permitted</td>
</tr>
<tr>
<td><strong>Frequency of BOD meetings – All companies</strong></td>
<td>Not more than 120 days shall intervene between 2 consecutive Board Meetings.</td>
<td>Section 285 of the 1956 Act provided that a meeting of its Board of directors shall be held at least once in every three (calendar) months.</td>
</tr>
<tr>
<td><strong>Where notice for BOD meetings to be served? – All companies</strong></td>
<td>Notice should be given to every director at his address registered with the company.</td>
<td>Notice of board meeting be given to every director for the time being in India and at his usual address in India to every other director.</td>
</tr>
<tr>
<td><strong>Quorum for meetings of BOD—All companies</strong></td>
<td>Participation of the directors at meeting of Board of directors by video conferencing or by other audio visual means shall also be counted for the purposes of quorum.</td>
<td>The 1956 Act did not recognize participating by video conferencing or by other audio visual means for quorum purposes.</td>
</tr>
<tr>
<td><strong>If meetings could not be held as stipulated for want of quorum – All companies</strong></td>
<td>No provision in 2013 Act along the lines of section 288(2) of the 1956 Act.</td>
<td>Section 288(2) of the 1956 Act provided that the provisions regarding minimum number of board meetings in a year and time gap between 2 meetings [See section 285 of the 1956 Act] not be deemed to have been contravened merely by reason of the fact that a meeting of the Board which had been called in compliance with the terms of that section could not be held for want of a quorum.</td>
</tr>
<tr>
<td><strong>Circulation of draft resolution to directors by electronic means</strong></td>
<td>Section 175 of the 2013 Act contains an enabling provision to circulate draft resolution with necessary papers to directors or members of committee through such electronic means as may be</td>
<td>No enabling provision for this.</td>
</tr>
</tbody>
</table>
### COMPANIES ACT, 2013

<table>
<thead>
<tr>
<th>Approval of resolution by circulation</th>
<th>Section 175 of the 2013 Act provides that approval should be by a majority of the directors or members (of the committee), who are entitled to vote on the resolution.</th>
<th>Not required.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Noting and minuting resolution passed by circulation –</td>
<td>A resolution passed by circulation shall be noted at a subsequent meeting of the Board or the committee thereof, as the case may be, and made part of the minutes of such meeting.</td>
<td>Not required.</td>
</tr>
</tbody>
</table>

### AUDIT COMMITTEE

#### For which companies it is mandatory to constitute audit committee

<table>
<thead>
<tr>
<th>Every listed company and such other class or classes of companies, as may be prescribed.</th>
<th>Every public company having paid-up capital of not less than five crores of rupees.</th>
</tr>
</thead>
</table>

#### Composition of the audit committee

- Minimum of three directors.
- Independent directors forming majority.
- Majority of members including chairperson shall be persons with ability to read and understand the financial statements.
- The Audit Committee shall consist of not less than three directors and such number of other directors as the Board may determine of which two-thirds of the total number members shall be directors, other than managing or whole-time directors.

#### Role and functions of the audit committee

- Every audit Committee shall act in accordance with the terms of reference in writing by the Board which shall include, among other things-
  - The recommendation for appointment, remuneration and terms of engagement of auditors of the company.
  - Review and monitor the auditor’s independence and performance, and effectiveness of audit process.
  - Examination of the financial statements and the auditors’ report thereon,
  - Approval or any

- The Audit Committee should –
  - Have discussions with the auditors periodically about;
    - Internal control systems,
    - The scope of audit including the observations of the auditors and
  - Review the half-yearly and annual financial statements before submission to the Board and
  - Also ensure compliance of internal control systems.
  - The Audit Committee shall have authority to investigate into any matter in relation to the items specified in this.
<table>
<thead>
<tr>
<th>Who shall have right to attend meetings of audit committee besides its members?</th>
<th>Auditors of a company and the key managerial personnel shall have a right to attend the meetings of the Audit Committee when it considers the auditor’s report but shall not have the right to vote.</th>
<th>Auditors, the internal auditor, if any, and the director incharge of finance shall attend and participate at meetings of the Audit Committee but shall not have the right to vote.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Attendance at annual general meetings by Chairman of Audit Committee</td>
<td>Not obligatory under the 2013 Act.</td>
<td>The chairman of the Audit Committee shall attend annual general meetings of the company to provide any clarification on matters relating to audit.</td>
</tr>
<tr>
<td>VIGIL MECHANISM</td>
<td>Setting up vigil mechanism</td>
<td>Every listed company or such other class or classes of companies as may be prescribed shall establish a vigil mechanism for directors / employees to report genuine concerns in such manner as may be prescribed; details of vigil mechanism to be</td>
</tr>
</tbody>
</table>
## NOMINATION AND REMUNERATION COMMITTEE

<table>
<thead>
<tr>
<th>Requirement to set up nomination and remuneration committee / Stake-holders’ relationship committee</th>
<th>Required for certain companies</th>
<th>Not required</th>
</tr>
</thead>
</table>

## POWERS OF BOARD

<table>
<thead>
<tr>
<th>Powers of Board which can be exercised by the board only by passing a resolution at the Board meeting – All companies</th>
<th>Powers of Board which can be exercised by the board only by passing a resolution at the Board meeting –</th>
<th>Powers mentioned in column (2) were not in list of powers which can be exercised by the Board only passing a resolution at the Board Meeting.</th>
</tr>
</thead>
<tbody>
<tr>
<td>• to grant loans or give guarantee or provide security in respect of loans;</td>
<td>• to approve financial statement and the Board’s report;</td>
<td></td>
</tr>
<tr>
<td>• to diversify the business of the company;</td>
<td>• to approve amalgamation, merger or reconstruction;</td>
<td></td>
</tr>
<tr>
<td>• to take over a company or acquire a controlling or substantial stake in another company;</td>
<td>• any other matter which may be prescribed:</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Restrictions on powers of Board - All companies</th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>• Applies to all companies.</td>
<td>• Applied only to public companies</td>
<td></td>
</tr>
<tr>
<td>Section 180 of the 2013 Act requires special resolution to exercise specified powers.</td>
<td>Only required ordinary resolution to exercise specified powers.</td>
<td></td>
</tr>
<tr>
<td>Section 180 defines the expressions “undertaking” and “substantially the whole of the undertaking” using 20% thresholds criteria.</td>
<td>Section 293 did not define what was meant by the expressions “undertaking” and “substantially the whole of the undertaking” used in section 293(1)(a).</td>
<td></td>
</tr>
<tr>
<td>Section 180(1)(b) covers the power to invest the amount of compensation received as a result of any merger or amalgamation.</td>
<td>Section 293(1)(c) covered the power to invest the amount of compensation received by the company in respect of the compulsory acquisition of any undertaking of the company.</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Powers of Board of Directors to Contribute to charitable</th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>• Section 181 of the 2013 Act specifies the limit of 5% of its</td>
<td>• Section 293(1)(e) of the 1956 Act as well as section 181 of</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

 disclosed in Board’s report.
### COMPANIES ACT, 2013

| funds | average net profits for the three immediately preceding financial year. There is no stipulation that net profits shall be calculated for this purpose as per section 198 of the 2013 Act.  
- Donations to charitable and other funds directly relating to the business of the company or the welfare of its employees not so excluded from the ambit of section 181 of the 2013 Act. | the 2013 Act deal with restriction on board’s powers to contribute to charitable and other funds as donation in any financial year in excess of specified limit.  
- The 1956 Act specified the limit of Rs.50,000 or 5% of its average net profits as determined in accordance with the provisions of sections 349 and 350 (of the 1956 Act) during the three financial years immediately preceding, whichever is greater. Net profits to be calculated for this purpose as per sections 349 and 350 of the 1956 Act. |

### DISCLOSURE OF INTEREST BY DIRECTOR

| Disclosure of interest by director – All companies | Disclosing concern or interest in any company or companies or bodies corporate, firms, or other association of individuals including the shareholding and disclosure of interest or concern or arrangement are distinct requirements and both need to be complied with. |

### LOANS TO DIRECTOR

| Loans to directors etc. – All companies | • Under section 185 of the 2013 Act, there is total prohibition on making loans to or giving guarantee or providing security in connection with loan taken by director of company and specified parties.  
- The above prohibition shall not apply to the giving of any loan to a managing or whole-time director—(i) as a part of the conditions of service extended by the company to all its employees; or (ii) pursuant to any scheme approved by the members by a special resolution; | Loans made to or security provided or guarantee given in connection with loan taken by director of the lending company and certain specified parties required previous approval of the Central Government in that behalf. |
### RELATED PARTY TRANSACTIONS

<table>
<thead>
<tr>
<th>Related party transactions – Contracting parties covered – All companies</th>
<th>‘Related party’ means:</th>
<th>Following related parties covered by 1956 Act</th>
</tr>
</thead>
<tbody>
<tr>
<td>(i) A director or his relative;</td>
<td>(i) A director or his relative;</td>
<td>• A director of the company or his relative,</td>
</tr>
<tr>
<td>(ii) A key managerial personnel or his relative;</td>
<td>(ii) A key managerial personnel or his relative;</td>
<td>• A firm in which such a director or relative is a partner,</td>
</tr>
<tr>
<td>(iii) A firm, in which a director, manager or his relative is a partner;</td>
<td>(iii) A firm, in which a director, manager or his relative is a partner;</td>
<td>• Any other partner in such a firm, or</td>
</tr>
<tr>
<td>(iv) A private company in which a director or manager is a member or director;</td>
<td>(iv) A private company in which a director or manager is a member or director;</td>
<td>• A private company of which the director is a member or director</td>
</tr>
<tr>
<td>(v) A public company in which a director or manager is a director or holds along with his relatives, more than 2% of its paid-up share capital;</td>
<td>(v) A public company in which a director or manager is a director or holds along with his relatives, more than 2% of its paid-up share capital;</td>
<td></td>
</tr>
<tr>
<td>(vi) Any body corporate of which a director or manager of the company is a shadow director;</td>
<td>(vi) Any body corporate of which a director or manager of the company is a shadow director;</td>
<td></td>
</tr>
<tr>
<td>(vii) Any shadow director of the company (i.e., any person on whose advice, directions or instructions a director or manager of the company is accustomed to act);</td>
<td>(vii) Any shadow director of the company (i.e., any person on whose advice, directions or instructions a director or manager of the company is accustomed to act);</td>
<td></td>
</tr>
<tr>
<td>(viii) Any company which is-</td>
<td>(viii) Any company which is-</td>
<td></td>
</tr>
<tr>
<td>(A) a holding, subsidiary or an associate company of such company; or</td>
<td>(A) a holding, subsidiary or an associate company of such company; or</td>
<td></td>
</tr>
<tr>
<td>(B) co-subsidiary i.e., a subsidiary of a holding company to which it is also a subsidiary.</td>
<td>(B) co-subsidiary i.e., a subsidiary of a holding company to which it is also a subsidiary.</td>
<td></td>
</tr>
<tr>
<td>(ix) Such other person as may be prescribed.</td>
<td>(ix) Such other person as may be prescribed.</td>
<td></td>
</tr>
<tr>
<td>The persons covered in items (vi) and (vii) above shall not be related parties if advice, directions or instructions are given by them in a professional capacity.</td>
<td>The persons covered in items (vi) and (vii) above shall not be related parties if advice, directions or instructions are given by them in a professional capacity.</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Related party transactions – which contracting parties are covered – All companies</th>
<th>The following related party transactions are covered by section 188 of the 2013 Act:</th>
<th>• The purchase of goods and materials from the company, or the sale of goods and materials to the company, by any director, relative, firm, partner or private company as aforesaid for cash at</th>
</tr>
</thead>
<tbody>
<tr>
<td>(a) Sale, purchase or supply of any goods or materials;</td>
<td>(a) Sale, purchase or supply of any goods or materials;</td>
<td></td>
</tr>
<tr>
<td>(b) Selling or otherwise</td>
<td>(b) Selling or otherwise</td>
<td></td>
</tr>
</tbody>
</table>

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**COMPANIES ACT, 2013**

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disposing of, or buying, property of any kind;
(c) Leasing of property of any kind;
(d) Availing or rendering of any services;
(e) Appointment of any agents for purchase or sale of goods, materials, services or property;
(f) Such related party’s appointment to any office or place of profit in the company, its subsidiary company or associate company; and
(g) Underwriting the subscription of any securities or derivatives thereof, of the company:

No contract or arrangement, in the case of a company having a paid up share capital of not less than such amount, or transactions not exceeding such sums, as may be prescribed, shall be entered into except with the prior approval of the company by a special resolution.

prevailing market prices.
• Any contrast or contracts between the company on one side and any such director, relative, firm, partner or private company on the other for sale, purchase or supply and services in which either the company or the director, relative, firm, partner or private company, as the case may be, regularly trades or does business:
Provided that the value of goods and materials or cost of services covered by the contracts do not exceed Rs.5000 in any year comprised in the period of the contract or contracts.
• In the case of a banking or insurance company any transaction in the ordinary course of business of such company with any director, relative, firm, partner or private company as aforesaid.
• A director, relative, firm, partner or private company as aforesaid may, in circumstances of urgent necessity, enter, without obtaining the consent of the Board, into any contract with the company for the sale, purchase or supply of any goods, materials or services even if the value of such goods or cost of such services exceeds five thousand rupees in the aggregate in any year.

OTHERS

Register of contracts or arrangements in which directors are interested

• Limit of Rs.1,000 under the 2013 Act has been increased to Rs.5,00,000 by section 189 of the 2013 Act.
• Section 189 requires that the register to be kept shall also be produced at the Section 301 of the 1956 Act exempted from the entry in the ‘Register of contracts or arrangements in which direction are interested’ any contract or arrangement for the sale,
### COMPANIES ACT, 2013

<table>
<thead>
<tr>
<th><strong>Restrictions on non-cash transactions involving directors – All companies</strong></th>
<th><strong>New provision – s.192-introduced by the 2013 Act.</strong></th>
<th><strong>No such restrictions in the 1956 Act.</strong></th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th><strong>Prohibition on forward dealings in securities of company by a key managerial personnel</strong></th>
<th><strong>New provision – s.194 - introduced by the 2013 Act.</strong></th>
<th><strong>No provisions on this issue in the 1956 Act.</strong></th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th><strong>Prohibition on insider trading of securities</strong></th>
<th><strong>New provision introduced by the 2013 Act.</strong></th>
<th><strong>No provisions on insider trading in the 1956 Act.</strong></th>
</tr>
</thead>
</table>

### INTER CORPORATE LOANS AND INVESTMENTS

<table>
<thead>
<tr>
<th><strong>Bar on making investment through more than 2 layers of investments companies</strong></th>
<th><strong>A company shall unless otherwise prescribed, make investment through not more than two layers of investment companies.</strong>&lt;br&gt;<strong>These provisions shall not affect:</strong>&lt;br&gt;(i) A company from acquiring any other company incorporated in a country outside India if such other company has investment subsidiaries beyond two layers as per the laws of such country;&lt;br&gt;(ii) a subsidiary company from having any investment subsidiary for the purposes of meeting the purposes of meeting the requirements under any law or under any rule or regulation framed under any law for the time being in force.</th>
<th><strong>No such bar in the 1956 Act.</strong></th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th><strong>Requirement to disclose inter corporate loans made by</strong></th>
<th><strong>The company shall disclose to the members in the financial</strong></th>
<th><strong>No requirements for such disclosures in the 1956 Act.</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td>company, inter corporate investments in its financial statements – All companies</td>
<td>states the full particulars of the loans given, investment made or guarantee given or security provided and the purpose for which the loan is proposed to be utilized by the recipient of the loan or guarantee or security.</td>
<td></td>
</tr>
<tr>
<td>Limits for making inter-corporate loans, investments etc. – All companies</td>
<td>• 60% of paid-up shares capital and free reserves and securities premium account or 100% of its free reserves and securities premium account, whichever is more. To exceed limit, prior approval of the company by special resolution is required.</td>
<td>• 60% of company’s paid-up shares capital and free reserves. To exceed limit, prior approval of the company by special resolution is required.</td>
</tr>
<tr>
<td>Benchmark interest rate for inter corporate loans – All companies</td>
<td>Interest rate of dated Government security.</td>
<td>RBI’s bank rate</td>
</tr>
<tr>
<td>Giving of guarantee in connection with loan to a company, without being previously authorized by a special resolution. – All companies</td>
<td>Not allowed</td>
<td>Section 372A of the 1956 Act permitted the giving of guarantee, without being previously authorized by a special resolution if – (a) a resolution is passed in the meeting of the Board authorizing to give guarantee in accordance with the provisions of this section; (b) there exists exceptional circumstances which prevent the company from obtaining previous authorization by a special resolution passed in a general meeting for giving a guarantee; and (c) the resolution of the Board is confirmed within twelve months, in a general meeting of the company or the annual general meeting held immediately after passing of the Board’s resolution, whichever is earlier.</td>
</tr>
<tr>
<td>Exemption for investments in loans to wholly owned subsidiary by holding</td>
<td>No such exemption from the provisions of section 186 of the 2013 Act.</td>
<td>Such exemption was allowed from the provisions of section 372A of the 1956 Act.</td>
</tr>
</tbody>
</table>
### Exemption to acquisitions by NBFCs

<table>
<thead>
<tr>
<th>Allowed</th>
<th>Not Allowed</th>
</tr>
</thead>
</table>

### APPOINTMENT OF MANAGERIAL PERSONS

| Appointment of managing director, whole-time director or manager - All companies | No company shall re-appoint any person as its managing director, whole time director or manager earlier than one year before the expiry of his term. | Any re-appointment, re-employment or extension of managing director or manager earlier than one year before the expiry of his term. |
| Appointment of key managerial personnel (KMP) – Compulsory for every company belonging to such class or classes of companies to have the following whole-time key managerial personnel (i) MD or CEO or manager and in their absence a WTD, (ii) company secretary and (iii) CFO. | Compulsory for every public company and every private company which is a subsidiary of public company having paid-up capital of prescribed sum to appoint a whole-time director or manager. Also, it made it compulsory for every company having a paid-up capital of such sum as may be prescribed to appoint a whole-time secretary. |
| Separation of offices of Chairperson and MD / CEO | The 2013 Act bars an individual from being appointed chairperson as well as MD/CEO unless (i) articles provide otherwise or (ii) company does not carry on multiple business. However, such class of companies engaged in multiple businesses which have appointed one or more CEOs for each business are exempt from this provision. | No such requirement. |
| Contents of Board resolution appointing KMP | The 2013 Act requires every whole-time KMP to be appointed by a board resolution containing terms and conditions of appointment including remuneration. | No such stipulation in 1956 Act. |
| Whole-time KMP in only one company | A whole-time KMP not to hold office in more than one company except in its subsidiary company | No such provision |
| **In case office of KMP vacated** | Resulting vacancy to be filled up by Board at a Board meeting within 6 months. | No provisions in this regard. |

### REMUNERATION OF MANAGERIAL PERSONNEL

| **Ratio of remuneration of each director to the median employee’s remuneration** | Every listed company shall disclose in the Board’s report the ratio of remuneration of each director to the median employee’s remuneration and such other details as may be prescribed. | Such disclosure not required. |

| **Receipt of remuneration / commission by MD / WTD from holding co. / subsidiary** | Any Managing Director or Whole-time director of the company who is in receipt of any commission from the company is not disqualified from receiving any remuneration or commission from any holding company of such company subject to its disclosure by the company in Board’s report. | No provision in this regard. |

| **Insurance** | • Premium paid on insurance taken by a company for indemnifying any of its key managerial personnel against any liability in respect of any negligence, breach of duty or breach of trust shall not be treated as part of the remuneration payable to any such personnel.  
• If such person (KMP) is provided guilty, the premium paid on such insurance shall be treated as part of remuneration. | No provision in this regard. |

### COMPANY SECRETARY / SECRETARIAL AUDIT

| **Secretarial audit for bigger companies** | Mandatory secretarial audit by a company secretary in practice for listed companies and such class | No such requirements. |
of companies as may be prescribed. Secretarial audit report to be annexed to BOD’s report.

| Functions of Company Secretary – All companies | New provisions introduced by the 2013 Act. | No provisions on functions of Company Secretary in the 1956 Act. |
Schedule V of the 2013 Act: Conditions to be fulfilled for the appointment of a managing or whole-time director or a manager without the approval of the Central Government

Corresponding to Schedule XII of 1956 Act- All companies

- The following differences between Schedule V of the 2013 Act and Schedule XIII of the 1956 Act are as under:

(i) Schedule XIII of the 1956 Act contained a list of 15 enactments under which conviction of an offence and being sentenced to imprisonment for any period and fine not exceeding Rs.1000, was disqualification for appointment as MD/WTD/Manager. Schedule V of the 2013 Act adds one more enactment to the list – the Prevention of Money-Laundering Act, 2002. Conviction of an offence under the Prevention of Money-Laundering Act, 2002 (and sentenced to imprisonment for any period and fine not exceeding Rs.1000) is disqualification for appointment as MD/WTD/manager under Schedule V of the 2013 Act. This was not a disqualification under Schedule XIII of the 1956 Act. Schedule V has replaced some of the enactments in the original list of 15 in Schedule XIII with their new avatars-FERA, 1973 with FEMA, 1999; the 1956 Act with the 2013 Act, the MRTP Act, 1973 with the Competition Act, 2002.

(ii) Minimum age limit for appointment as MD/WTD/manager was 25 years in Schedule XIII. However, anyone below 25 years but attained age of majority could be appointed if company passed a special resolution for this. Minimum age limit lowered by Schedule V of 2013 Act to 21 years minimum age limit is not relaxable by company.

(iii) The Central Govt. is empowered to exempt by notification any class or classes of companies from any of the requirements of Schedule V. Central Govt. had no such power under the 1956 Act in respect of Schedule XIII.

(iv) Under section II of Part II of both Schedule XIII of the 1956 Act as well as Schedule V of the 2013 Act, companies having no profits or inadequate profits are allowed to pay remuneration varying with effective capital without the Central Govt.’s approval. Schedule V has simplified the slabs and scale of remuneration by merging three slabs in Schedule XIII of the 1956 Act into one slab. Unlike Schedule XIII which capped remuneration at Rs.48,00,000 p.a. or Rs.4,00,000 per month Schedule V of the 2013 Act provides for removal of remuneration cap and provides that if effective capital exceeds Rs.100 crores, limit for remuneration shall be Rs.60 lakhs plus 0.01% of effective capital in excess of Rs.250 crores if effective capital is more than Rs.250 crores. The limits can be doubled by company by passing a special resolution which was not the case in Schedule XIII of 1956 Act.

(v) Schedule V of the 2013 Act provides that in case of managerial person who is not holding securities of the company of nominal value of Rs.5 lakhs or more or an employee or director of company or not related to any director or promoter at any time during the 2 years prior to his appointment as managerial personnel – limit on remuneration is 2.5% of current relevant profit. This provision was not there in Schedule XIII of the 1956 Act.

(vi) Section III of Part II of Schedule V has special provisions for newly incorporated companies for 7 years after incorporation, sick companies, remuneration fixed by BIFR or NCLT, SEZ. In these cases, remuneration in excess of limits in Section II of Part II can be paid without Central Govt’s prior approval. This was not the case in Schedule XII of the 1956 Act.
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