

Applicability COMPANIES ACT, 2013 **to the Public Limited Companies**

Herewith we are explaining the formalities and requirements to be completed in view of New Companies Act, 2013 for a Public Limited companies. Some major points are here discussed and elaborated.

BOARD OF DIRECTORS

- A minimum number of 3 Directors and maximum 15 directors
- A company may appoint more than 15 directors by passing special resolution
- A class or classes of companies shall have at least one woman director
- Now a person cannot become a director in more than 20 companies and out of this 20, he cannot be a director of more than 10 public companies. (section 165 (1))
- Now a director shall vacate the office, if he fails to attend all the meetings of board for consecutive period of 12 months and most importantly he has to vacate office, even if leave of absence has been granted to him/her. (section 167 (1) (b))
- Now the return for appointment or any change therein for Key Managerial persons shall be filed just like filed for directors.

Woman Director

- The following class of companies shall appoint at least one woman director-
 - (i) every listed company;
 - (ii) every other public company having -
 - paid-up share capital of one hundred crore rupees or more; or
 - turnover of three hundred crore rupees or more:

Any intermittent vacancy of a woman director shall be filled-up by the Board at the earliest but not later than immediate next Board meeting or three months from the date of such vacancy whichever is later. [Rule 3 of the Companies (Appointment and Qualification of Directors) Rules, 2014]

Independent Directors

- Every listed public company shall have at least one-third of the total number of directors as independent directors and the central government may prescribe the minimum number of independent directors in case of any class or classes of companies. (section 149 (3))

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Company Secretaries

- The following class or classes of companies shall have **at least two directors as independent directors** -
 - (i) the Public Companies having paid up share capital of ten crore rupees or more; or
 - (ii) the Public Companies having turnover of one hundred crore rupees or more; or
 - (iii) the Public Companies which have, in aggregate, outstanding loans, debentures and deposits, exceeding fifty crore rupees:

Provided that 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, such higher number of independent directors

Explanation. - For the purposes of this rule, it is here by clarified that, the paid up share capital or turnover or outstanding loans, debentures and deposits, as the case may be, as existing on the last date of latest audited financial statements shall be taken into account:

Board Meetings

- Every company shall hold the first meeting of Board of Directors within 30 days of Incorporation and thereafter hold 4 meetings of board every year and not more than 120 days shall intervene between 2 consecutive board meetings.
- The Board meeting shall be called by giving not less than seven days' notice.
- The Quorum for the meeting of the board of Directors shall be one-third of its total strength or two directors whichever is higher.

Secretarial Audit report

- All listed companies and such companies belonging to class as may be prescribed shall annex the **Secretarial audit report** with the board report. (Section 204(1))
Class of Companies-
 - (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.

Committees

- The Board of directors of every listed companies and the following classes of companies shall constitute **an Audit Committee, a Nomination and Remuneration Committee** of the Board-
 - all public companies with a paid up capital of ten crore rupees or more;
 - all public companies having turnover of one hundred crore rupees or more;
 - 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.
- **A Stakeholders Relationship committee (section 178)**
The board of directors of the company which consists of more than 1000 shareholders, debenture holders, deposit holders and any other security holders at any time during a financial year shall constitute a Stakeholders Relationship committee consist of a chairperson who shall be a non-executive director and such other members as may be decided by the board.
- **Constitution of Audit Committee (Section 177)**
 - An Audit committee shall consist of at least three directors with independent directors forming majority
Provided that all members of audit committee shall be able to read and understand the financial statement
- **Constitution of Nomination and Remuneration Committee (section 178)**
 - It shall consist of three or more non-executive directors out of which not less one-half shall be Independent Directors
 - Provided that the chairperson of company whether executive or non-executive may be appointed as a member of committee but shall not chair such committee.
- **Establishment of Vigil Mechanism (Section 177)**
- 1) 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 their genuine concerns or grievances-
 - the Companies which accept deposits from the public;
 - the Companies which have borrowed money from banks and public financial institutions in excess of fifty crore rupees.
- (2) The companies which are required to constitute an audit committee shall oversee the vigil mechanism through the committee
- (3) In case of other companies, the Board of directors shall nominate a director to play the role of audit committee for the purpose of vigil mechanism to whom other directors and employees may report their concerns.
- (4) The vigil mechanism shall provide for adequate safeguards against victimisation of employees and directors who avail of the vigil mechanism and also provide for direct access to the Chairperson of the Audit Committee or the director nominated to play the role of Audit Committee, as the case may be, in exceptional cases.
- (5) In case of repeated frivolous complaints being filed by a director or an employee, the audit committee or the director nominated to play the role of audit committee may take suitable action against the concerned director or employee including reprimand.

Appointment of Key Managerial Personnel (Section 203)

- Every listed company and every other public company having a paid-up share capital of ten crore rupees or more shall have whole-time key managerial personnel.
 - Managing Director or Chief Executive Officer or manager and in their absence a whole time director
 - Company Secretary and
 - Chief Financial officer
- whole-time key managerial personnel shall be appointed by means of resolution of the board.
- key managerial personnel except MD shall not hold office in more than one company except in its subsidiary company

Annual return (section 92)

- The annual return, filed by a listed company or a company having **paid-up share capital of ten crore rupees or more or turnover of fifty crore rupees or more, shall be certified by a Company Secretary in practice**
- Every company shall file the annual return of the company within 60 days of AGM.

General Meeting

- General meeting may be called not giving not less than 21 clear days' notice.
- If the consent is obtained in writing or by Electronic means of members not less than 95% of members entitled to vote then General meeting can be called by short notice.
- Quorum (Section 103)
 - In case of a public company,—
 - **Five** members personally present if the number of members as on the date of meeting is not more than one thousand;
 - **Fifteen** members personally present if the number of members as on the date of meeting is more than one thousand but up to five thousand;
 - **Thirty** members personally present if the number of members as on the date of the meeting exceeds five thousand.

Postal Ballot

Applicability

All Companies other than One Person Company and other companies having members up to 200 are not required to transact any business through postal ballot.

Business transacted only by postal ballot

- 1) Alteration of object clause in memorandum
- 2) Alteration of provisions in Articles of Association, under sub-section (68) of section 2, are required to be included in the articles of a company in order to constitute it a private company
- 3) Change in place of registered office outside the local limits of any city, town or village
- 4) Issue of shares with differential rights
- 5) Variation in the rights attached to a class of shares or debentures or other securities
- 6) Buy-back of shares by a company
- 7) Election of a director under section 151
- 8) Sale of the whole or substantially the whole of an undertaking of a company
- 9) Giving loans or extending guarantee or providing security in excess of the limit prescribed under sub-section (3) of section 186; -

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