

# **COMPANIES ACT, 2013**

(Passed by Lok Sabha on 18.12.2012 and By Rajya Sabha on 08.08.2013)

*Immediate Action*

On 01<sup>st</sup> April, 2014

Act has 470 clauses &  
29 Chapters

7 Schedules

Rules are prescribed in  
total XXXIX Chapters

TOP

1. [Directors](#)
2. [Restriction on power of Board](#)
3. [Loans to Directors](#)
4. [Further issue of Shares](#)
5. [Public Offer and Private Placement](#)
6. [Deposit](#)
7. [Disclosure of Interest](#)
8. [Registered Valuer](#)
9. [Secretarial Audit](#)
10. [Audit](#)

**(U/s 149 to 172 as per companies act 2013)**

- Minimum of number 3 directors in the case of a public company. (section 149 (1))
- Minimum number of 2 directors in the case of a private company.(section 149 (1))
- Maximum of 15 Directors. (section 149 (1))
- A company may appoint more than 15 directors by passing special resolution.(section 149 (1))
- A class or classes of companies shall have at least one woman director. (section 149 (1))
- **Every company shall have at least one director who has stayed in India for a total period of not less than one hundred and eighty-two days in the previous calendar year. (section 149 (2))**
- Every director shall be appointed by the company in general meeting. (section 152 (2))
- Consent to act as a director should be filed within 30 days of his appointment to registrar (section 152 (5))
- In respect of retirement of directors by rotation shall not be applicable to appointment of independent directors. (section 149 (12))
- 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, where his company fails to file the financial statement or annual return for continuous period of 3 financial years or has failed to deposit, interest thereon, redeem debentures or pay dividend. (164 (2))**
- **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))**
- The Managing Director and whole time director shall not be appointed for more than 5 years at a time and the minimum age is 21 and maximum 70. (196 (2) (3))
- 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))
- **Penalty**

If any individual or director of a company, contravenes any of the provisions of section 152, section 155 and section 156, such individual or director of the company shall be punishable with imprisonment for a term which may extend to six months or with fine which may extend to fifty thousand rupees and where the contravention is a continuing one, with a further fine which may extend to five hundred rupees for every day after the first during which the contravention continues.

## Restriction on power of Board



### **(Section 180 as per Companies Act, 2013) (section 293 as per act 1956)**

Section 180 is applicable to all kinds of Companies, i.e. to both Private and Public Companies.

Board has required passing Special resolution to exercise the following powersnamely:—

(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: Provided that the acceptance by a banking company, in the ordinary course of its business, of deposits of money from the public, repayable on demand or otherwise, and withdrawable by cheque, draft, order or otherwise, shall not be deemed to be a borrowing of monies by the banking company within the meaning of this clause.

(d) to remit, or give time for the repayment of, any debt due from a director.

Explanation.—For the purposes of this clause,—

(i) "undertaking" shall mean an undertaking in which the investment of the company exceeds twenty per cent. of its net worth as per the audited balance sheet of the preceding financial year or an undertaking which generates twenty per cent of the total income of the company during the previous financial year;

(ii) the expression "substantially the whole of the undertaking" in any financial year shall mean twenty per cent or more of the value of the undertaking as per the audited balance sheet of the preceding financial year;

## Loans to Directors



### **(Section 185 as per Companies Act, 2013) ( section 295 as per act 1956)**

Section 185 is applicable to all kinds of Companies, i.e. to both Private and Public Companies.

#### **Transactions which are prohibited, directly or indirectly:**

- Advancing of any loan, including any loan **represented by a book debt**, and
- Giving of any guarantee or providing of any security in connection with any loan.

#### **Transactions are prohibited with following parties: ( do not make transaction with following parties)**

A. Company, on one side, and

B. Any one or more of the following on the other side

- any director of the company
- any director of the holding company
- any partner or relative of director of company or holding company
- any firm in which any such director or relative is a partner
- any private company of which any such director is a director or member
- any body corporate at a general meeting of which not less than 25% of the total voting power may be exercised or controlled by any such director, or by two or more such directors together
- any body corporate, the Board of directors, managing director or manager, whereof is accustomed to act in accordance with the directions or instructions of the Board, or of any director or directors, of the lending company.

#### **Penalty**

If any loan is advanced or a guarantee or security is given or provided in contravention of the provisions of sub-section (1), the company shall be punishable with fine which shall not be less than five lakh rupees but which may extend to twenty-five lakh rupees, and the director or the other person to whom any loan is advanced or guarantee or security is given or provided in connection with any loan taken by him or the other person, shall be punishable with imprisonment which may extend to six months or with fine which shall not be less than five lakh rupees but which may extend to twenty-five lakh rupees, or with both.

## **Further Issue of shares /Capital**



**(Section 62 as per Companies act 2013) (Section 81 as per companies act 1956)**

**The provisions of this clause shall be applicable to all type of companies.**

1. Company at time of increase in capital by issue of further shares, shares shall be offered to

- A) Who is member of company at the date of offer in proportion, by sending letter of offer subject to condition as follows-
  - I) By sending notice specifying the number of shares offered and within 15 to 30 days from the offer, acceptance should be conveyed and if not it is deemed to be declined
  - II) Person has given right to renounce, subject to AOA and notice should contain this fact
  - III) After expiry of time or if offer is declined then director shall dispose off shares in such manner which is not disadvantageous to shareholders and company.
- B) to the employees under employee stock option Subject to special resolution and such other condition
- C) To any other person whether or not referred in clause A or B above

2. Notice shall be dispatched at least 30 days before opening of offer by registered post or speed post or electronic mode

**Detail procedure is prescribed in Rule No. 13 regarding Issue of shares on preferential basis of Companies (Share Capital and Debentures) Rules, 2014 under chapter 4.**

## **Public Offer and private placement**



**(U/s 23 as per companies act 2013)**

(1) A public company may issue securities—

(a) To public through prospectus (section 2(70)) (herein referred to as "public offer") by complying with provisions of this Part; or

(b) Through private placement by complying with the provisions of Part II of this Chapter: or

(c) Through a rights issue or a bonus issue in accordance with the provisions of this Act and in case of a listed company or a company which intends to get its securities listed also with the provisions of the Securities and Exchange Board of India Act,1992 and the rules and regulations made there under.

(2) A private company may be issue securities-

(a) by way of rights issue or bonus issue in accordance with be provisions of this Act; or

(b) through private placement by complying with the provisions of Part II of this Chapter.

Explanation:- For the purposes of this Chapter. "Public offer" includes initial public offer or further public offer or 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.

**Detail procedure of private placement is prescribed in Part II , section 42 under chapter 3 Prospectus and allotment of Securities.**

#### **DEPOSIT Chapter V**



**(U/S 73 to 76 of the Companies Act, 2013 & Companies (Acceptance of Deposits) Rules, 2014)**  
**(Section 58 & 58A as per companies act 1956)**

**It is applicable both Private & Public Limited company.**

**DEPOSITS DOES NOT INCLUDE: (Rule 2 (VII) )**

1. any amount received by a company from any other company;
2. any amount received from a person who, at the time of the receipt of the amount, was a director of the company

Amount received form Members & relative of Director shall consider as a Deposit in a Private Limited Company. (Earlier in CA 1956 it was exempted)

Companies, other than 'eligible companies' i.e. a public company having a net worth of not less than Rs. 100 crore or a turnover of not less than Rs. 500 crore, cannot accept deposit from public. (Section 76)

To accept deposit from Members, company has required to pass Special resolution in General meeting and required to follow procedure as given in Section 73 (2) read with rule 4,5& 13.

#### **Procedure**

- (a) Issue of a circular with full details like financial position of the company, credit rating, number of depositors and the amount due towards the deposits
- (b) File a copy of a circular along with statement with registrar within 30days before the date of issue of circular.
- (c) Deposit repayment reserve account created by depositing 15% of amount of its deposits on or before the 30th day of April of each year
- (d) Provide deposit insurance at least thirty days before the issue of circular or advertisement or at least thirty days before the date of renewal, as the case may be.

- (e) Certify that the company has not committed any default in repayment of deposit

**Deposit Amount or interest due which remain unpaid before the commencement of Act, then the company is required to undertake following steps:** (section 74)

- (a) file a statement in with registrar within 3 months from commencement of act or from the date on which such payment are due, containing details of all the deposits remaining unpaid.
- (b) Repayment of aforesaid deposits along with interest, within 1 year form the commencement of Act or from date payment is due, whichever is earlier

Every company, to which these rules apply, shall file return to Registrar of Companies on or before the 30<sup>th</sup> June, of every year.

**Penalty**

It is punishable with fine which shall not be less than one crore rupees but which may extend to ten crore rupees and every officer of the company who is in default shall be punishable with imprisonment which may extend to seven years or with fine which shall not be less than twenty-five lakh rupees but which may extend to two crore rupees, or with both.

**Disclosure of Interest**



**(U/s 184 as per companies act 2013)(Section 299 & 300 as per companies act 1956)**  
**(Rule 9 Companies (Meetings of Board and its Powers) Rules, 2014)**

Every director is required to disclose his concern or interest in any company or companies or bodies corporate (including shareholding interest), firms or other association of individuals, by giving a notice in writing in Form MBP-1.

Every director shall at the first meeting of the Board in which he participates as a director and thereafter at the first meeting of the Board in every financial year or whenever there is any change in the disclosures already made, then at the first Board meeting held after such change, disclose his concern or interest in any company or companies or bodies corporate, firms, or other association of individuals which shall include the shareholding,

If a director of the company contravenes the provisions of section 184 of the Act then such director shall be punishable with imprisonment 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 with both.

**In a private company, an interested director cannot vote or take part in the discussion relating to any matter, in which he is interested,**

## Registered Valuer



### (U/s 247 as per companies act 2013)

Where a valuation is required to be made in respect of any property, stocks, shares, debentures, securities or goodwill or any other assets (herein referred to as the assets) or net worth of a company or its liabilities under the provision of this Act, it shall be valued by a person having such qualifications and experience and registered as a valuer in such manner, on such terms and conditions *as may be prescribed* (Rule 17.1, 17.2, 17.3, 17.4, 17.5A) and appointed by the audit committee or in its absence by the Board of Directors of that company.

#### Penalty:

If a valuer contravenes the provisions of this section or the rules made thereunder, the valuer shall be punishable with fine which shall not be less than twenty-five thousand rupees but which may extend to one lakh rupees:

Provided that if the valuer has contravened such provisions with the intention to defraud the company or its members, he shall be punishable with imprisonment for a term which may extend to one year and with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees.

Where a valuer has been convicted for above, he shall be liable to—

- (i) Refund the remuneration received by him to the company; and
- (ii) Pay for damages to the company or to any other person for loss arising out of incorrect or misleading statements of particulars made in his report.

## Secretarial Audit



### (U/s 204 as per companies act 2013)

(1) Every listed company and a company belonging to other class of companies *as may be prescribed* (Rule 13.7 (1)) shall annex with its Board's report under section 134 (3), a secretarial audit report, given by a company secretary in practice, in such form *as may be prescribed* (Rule 13.7 (2)).

(2) 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.

(3) The Board of Directors, in their report made in terms of sub-section (3) of section 134, shall explain in full any qualification or observation or other remarks made by the company secretary in practice in his report under sub-section (1).

(4) If a company or any officer of the company or the company secretary in practice, contravenes the provisions of this section, the company, every officer of the company or the company secretary in practice, who is in default, shall be punishable with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees.



**(U/s 139-148 as per companies act 2013) (U/s 224-233B as per companies act 1956)**Appointment of auditor in unlisted companies

At 1 AGM – to hold office till conclusion of 6<sup>th</sup> AGM subject to ratification by members at every AGM  
Subsequent- to hold office till conclusion of 6<sup>th</sup> meeting, subject to ratification by members at every AGM

Appointment of Auditor in listed and specified class of companies

a) Individual- 1 term of 5 Consecutive years

b) Firm - 2 terms of 5 Consecutive years

Cooling off period of 5 years before next appointment.

An individual auditor who has completed his term under clause (a) and an audit firm which has completed its term under clause (b) shall not be eligible for re-appointment as auditor in the same company for five years from the completion of term;

Members of a company may resolve to provide that—

(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.

Provided further that as on the date of appointment no audit firm having a common partner or partners to the other audit firm, whose tenure has expired in a company immediately preceding the financial year, shall be appointed as auditor of the same company for a period of five years:

Provided also that every company, existing on or before the commencement of this Act which is required to comply the provisions within three years from the date of commencement of this Act:

- Auditor to appointed within 30 days of incorporation in a board meeting else within 90 days in EGM.
- Company to file intimation of appointment of auditor with registrar within 15 days of meeting in which appointed
- On resignation, auditor to file statement with company and registrar within 30 days.
- Auditors to attend all general meetings unless specifically exempted by the company.

An auditor shall not allowed 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:

Provided that an auditor or audit firm who or which has been performing any non-audit services on or before the commencement of this Act shall comply with the provisions of this section before the closure of the first financial year after the date of such commencement.

**Auditors to attend general meeting**

The auditor shall, unless otherwise exempted by the company, attend either by himself or through his authorised representative, who shall also be qualified to be an auditor, any general meeting and shall have right to be heard at such meeting on any part of the business which concerns him as the auditor.

**Penalty**

If any of the provisions of sections 139 to 146 (both inclusive) is contravened, the company shall be punishable with fine which shall not be less than twenty-five thousand rupees but which may extend to 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 one year or with fine which shall not be less than ten thousand rupees but which may extend to one lakh rupees, or with both.

If an auditor of a company contravenes any of the provisions of *section 139*, section 143, section 144 or section 145, the auditor shall be punishable with fine which shall not be less than twenty-five thousand rupees but which may extend to five lakh rupees:

CS AMRUT K PARAKH

PRACTICING COMPANY SECRETARIES

12/404, Opp. Jain Hospital, Behind Jain Mandir,  
ICHALKARANJI-416115

Landline =0230-2425617

Mobile -09423040074

Email – amrutparakh@gmail.com