

COMPANIES ACT, 2013

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

- The new Act has 470 clauses divided in to 29 chapters.
- The new act has 7 schedules.
- The act has empowered to Central Government to make rules, etc. through delegated legislation.
- Draft rules are given in total XXIX chapter addition to the 29 chapter of Act.
- 33 new definitions are introduced in the new Act, 2013.
- More than 180 clauses of new Act have prescribed as specified by way of rules.
- Penalties are hiked in all clauses in new Act, 2013.
- Many new chapters have been introduced Viz- Registered Valuers, Government Companies, Nidhis and Special Court.

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Associate Company (U/s 2(6) as per Act 2013) = new definition)

“Associate company”, in relation to another company, means a company in which that other company has a significant influence, but which is not a subsidiary company of the company having such influence and includes a joint venture company.

Explanation —For the purposes of this clause, “SIGNIFICANT INFLUENCE” means control of at least twenty per cent of **total share capital (Rule 1.2(1) (s))**, or of business decisions under an agreement;

Small Company = (U/s 2(85) as per Act 2013) = New Definition)

“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;

Public Company=(U/s 2(71) as per Act 2013) (U/s 2(37), 3 as per Act 1956)

“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 ;

Promoter= (U/s 2(69) as per Act 2013)(U/s 62(6) (a) as per Act 1956)

“Promoter” means a person—

(a) 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

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

(c) 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 in a professional capacity.

Related Party =(U/s 2(76) as per Act 2013) = New Definition

“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) anybody 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;(Rule 1.3)

Holding company = (U/s 2(46) as per Act 2013)(U/s 2(19) and U/s 4 as per Act 1956)

“holding company”, in relation to one or more other companies, means a company of which such companies are subsidiary companies.

Subsidiary company = (U/s 2(87) as per Act 2013)(U/s 2(47) and U/s 4 as per Act 1956)

“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.

One Person Company = (U/s 2(62) as per companies act 2013)= New Definition

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

Private Limited Company = (U/s 2(68) as per Act 2013) (U/s 2(35) as per Act 1956)

“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;

Key Managerial Personnel (KMP), in relation to a Company means

(i) the Managing Director, or the Chief Executive Officer or the Manager

(ii) the Company Secretary; and

(iii) the whole-time director;

(iv) the Chief Financial Officer:(v) Such Other officer as may be prescribed.

Dormant Company



(U/s 455 as per Act 2013)

Where a company is formed and registered under this Act for a future project or to hold an asset or intellectual property and has no significant accounting transaction, such a company or an inactive company may make an application to the Registrar in such manner as may be prescribed (Rule 29.5) for obtaining the status of a dormant company.

Independent Director



(U/s 2(47) as per companies act 2013)

“Independent director” means an independent director referred to in sub-section (5) of section 149.

An “independent director”, in relation to a company, means a director other than a managing director or a whole-time director or a nominee director,—

- who, in the opinion of the Board, is a person of integrity and possesses relevant expertise and experience;
- (i) who is or was not a promoter of the company or its holding, subsidiary or associate company;
(ii) who is not related to promoters or directors in the company, its holding, subsidiary or associate company;
- who has or had no pecuniary relationship with the company, its holding, subsidiary or associate company, or their promoters, or directors, during the two immediately preceding financial years or during the current financial year;
- none of whose relatives has or had pecuniary relationship or transaction with the company, its holding, subsidiary or associate company, or their promoters, or directors, amounting to two per cent or more of its gross turnover or total income or fifty lakh rupees or such higher amount as may be prescribed, whichever is lower, during the two immediately preceding financial years or during the current financial year;
- Who, neither himself nor any of his relatives—
 - (i) holds 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 organization that receives twenty-five per cent or more of its receipts from the company, any of its promoters, directors or its holding, subsidiary or associate company or that holds two per cent or more of the total voting power of the company; or
- Who possesses such other qualifications as may be prescribed.

- The company and every officer of the company who is in default shall be punishable with fine which shall not be less than fifty thousand rupees but which may extend to five lakh rupees.

Board Meeting

(U/s 173 as per companies act 2013) (U/s 285,286 as per companies act 1956)

- Every company shall hold the first meeting of the Board of Directors within 30 days of the date of its incorporation.
- Not more than One Hundred and Twenty days shall intervene between two consecutive meetings of the board.
- Meeting of the Board shall be called by giving not less than seven days' notice.
- Every officer of the company whose duty is to give notice under this section and who fails to do so shall be liable to a penalty of twenty –five thousand rupees.

Annual General Meeting

(U/s 96 as per companies act 2013) (U/s 166 as per companies act 1956)

- 1st AGM to be held within 9 months from closure of accounts
- 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
- 21 days clear notice to be given by all companies.
- Notice may be given in writing or in electronic form in the manner prescribed.
- Consent to be given by not less than 95% of the members entitled to vote at the meeting.
- Quorum =
Private Companies- 2 members
Public companies- 5 members where total numbers of members do not exceed 1000
15 members where total number of members exceeds 1000 but do not exceed 5000
30 members where total number of members exceed 5000
- Company and every officer of the company who is in default shall be punishable with fine which may extend to one lakh rupees and in the case of a continuing default, with a further fine which may extend to five thousand rupees for every day during which such default continues.

Director report

(U/s 134 as per companies act 2013) (U/s 215, 216, 217 as per companies act 1956)

- The financial statement or consolidated financial statement shall be signed on behalf of the Board by
- atleast by the chairperson of the company where he is authorised by the Board or
 - by twodirectors out of which one shall be managing director and the Chief Executive Officer, if he isa director in the company,
 - the Chief Financial Officer and the company secretary of thecompany, if they are appointed,

In the case of a One Person Company, only by one director, for submission to the auditor for his report thereon

Board of Directors report shall include [except One Person Company]—

- the extract of the annual return as provided under section 92(3);
- number of meetings of the Board;
- Directors' Responsibility Statement;
- declaration given by independent directors under section 149 (6);
- in case of a company covered under section 178(1), company's policy on directors' appointment and remuneration including criteria for determining qualifications, positive attributes, independence of a director and other matters provided under section 178 (3);
- Explanations or comments by the Board on every qualification, reservation or adverse remark or disclaimer made—(i) by the auditor ; and (ii) by the company secretary in practice in his *secretarial audit report*;
- particulars of loans, guarantees or investments under section 186;
- particulars of contracts or arrangements with related parties referred to in section 188(1) in the prescribed form;
- the state of the company's affairs;
- the proposed amounts to carry to any reserves;
- Dividend;
- material changes and commitments, if any, affecting the financial position of the company which have occurred between the end of the financial year of the company to which the financial statements relate and the date of the report;
- the conservation of energy, technology absorption, foreign exchange earnings and outgo, as may be prescribed; standards.
- a risk management policy of 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;
- the details about the policy developed and implemented by the company on corporate social responsibility initiatives taken during the year;
- listed company and every other public company having such paid-up share capital *as may be prescribed*, a statement indicating the manner in which formal annual 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*.

The Directors' Responsibility Statement shall add following 2 new clauses —

(e) The directors, in the case of a listed company, had laid down internal financial controls to be followed by the company and that such internal financial controls are adequate and were operating effectively.

Explanation.—For the purposes of this clause, the term “internal financial controls” means the policies and procedures adopted by the company for ensuring the orderly and efficient conduct of its business, including adherence to company's policies, the safeguarding of its assets, the prevention and detection of frauds and errors, the accuracy and completeness of the accounting records, and the timely preparation of reliable financial information;

(f) the directors had devised proper systems to ensure compliance with the provisions of all applicable laws and that such systems were adequate and operating effectively.

Penalty

If a company contravenes the provisions of this section, the company 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.

Annual Return



(U/s 92 as per Act 2013) (U/s 159,160,161,162 and Sch. 5 as per Act 1956)

Every company shall prepare a return (hereinafter referred to as the annual return) *in the prescribed form (Rule 7.9(1))* on the close of the financial year regarding & its includes —

- (a) registered office, principal business activities, particulars of its holding, subsidiary and associate companies;
- (b) shares, debentures and other securities and shareholding pattern;
- (c) indebtedness;
- (d) members and debenture-holders along with changes therein since the close of the previous financial year;
- (e) promoters, directors, key managerial personnel along with changes therein since the close of the previous financial year;
- (f) Meetings of members or a class thereof, Board and its various committees along with attendance details;
- (g) remuneration of directors and key managerial personnel;
- (h) penalty or punishment imposed on the company, directors or officers and details of compounding of offences and appeals made against such penalty or punishment;
- (i) matters relating to certification of compliances, disclosures as may be prescribed;
- (j) details, as may be prescribed, in respect of shares held by or on behalf of the Foreign Institutional Investors indicating their names, addresses, countries of incorporation, registration and percentage of shareholding held by them; and
- (k) *such other matters as may be prescribed*, and signed by a director and the company secretary, or where there is no company secretary, by a company secretary in practice:

Provided that in relation to One Person Company and small company, the annual return shall be signed by the company secretary, or where there is no company secretary, by the director of the company.

Annual return of listed company or, by a company having such paid-up capital and turnover as *may be prescribed*, shall be certified by a company secretary in practice.

Annual return in the form *as may be prescribed (Rule 7.10(1))* shall form part of the Board's report.

Every company shall file a copy of the annual return, within sixty days from the date of AGM or where no AGM is held in any year within sixty days from the date on which the annual general meeting should have been held together with the statement specifying the reasons for not holding the annual general meeting.

Penalty

If a company fails to file its annual return under sub-section (4), before the expiry of the period specified under section 403 with additional fee, the company shall be punishable with fine which shall not be less than fifty thousand rupees but which may extend to five lakhs 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 fifty thousand rupees but which may extend to five lakh rupees, or with both.

Bonus Shares



(U/s 63 as per companies act 2013)

(1) A company may issue fully paid-up bonus shares to its members, in any manner whatsoever, out of—

- (i) its free reserves;(ii) the securities premium account; or
- (iii) the capital redemption reserve account:

Bonus shares shall not issue by capitalising reserves created by the revaluation of assets.

(2) forissuing fully paid up bonus shares under sub-section (1) —

- (a) it is authorised by its articles ;
 - (b) it has, on the recommendation of the Board, been authorised in the general meeting ;
 - (c) not defaulted in payment of interest or principal of fixed deposits or debt securities issued by it;
 - (d) it has not defaulted payment of statutory dues of the employees such as contribution to provident fund, gratuity and bonus;
 - (e) the partly paid-up shares, if any outstanding on the date of allotment, are made fully paid-up;
 - (f) it complies with such conditions *as may be prescribed (Rule 4.12)*.
- (3) The bonus shares shall not be issued in lieu of dividend.

Miscellaneous



- *Financial year to end on 31st March of every year for all companies.No provision regarding extension of financial year.*
- Company shall not issue share at Discount except provided in section 54, otherwise is shall be void.
- Financial statements can be signed by chairman alone if so authorized by board.
- Clause 180 of Act, 2013 is now applicable to Private Limited Company also. Earlier it is applicable only public limited company.
- Every Listed company shall file a return in the prescribed form with the registrar with respect to change in the number of shares held by promoters and top ten shareholders of such company, within 15 days of such change.
- The provisions of postal ballot shall be applicable to all companies whether listed or unlisted.
- A company cannot declare interim dividend at a rate higher than the average dividends declared by the company during the immediately preceding 3 financial years, where it has

incurred loss during the current financial year up to the end of the quarter immediately preceding the date of declaration of interim dividend.

- In prescribed class or classes of companies, there should be at least one woman director.
- Out of all directors in the company, at least one director shall be a person who has stayed in India for a total period of not less than 182 days in previous calendar year.
- Every listed Public company shall have at least one-third of the total number of directors as independent directors. Companies existing as on commencement of this act have been provided a transition period of 1 year for the compliance of this provision.
- Every 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 consisting of a chairperson who shall be a non-executive director and such other members as may be decided by the board.
- No approval of the central government is required for entering into any related party transactions.
- MOA to contain the main objects only to be incorporated and any matter considered necessary in furtherance thereof. Concept of Main Object, Ancillary Object and other object are discontinued.
- ***Commencement of business is applicable to all companies having share capital.***
- To change the list of relative Viz.- by adding -Spouse, steps father& by dispensing - the son's son's wife, son's Daughter's husband, Daughter's Husband, Daughter's Son, Daughter's Son wife, Daughter's Daughter Daughter's Daughter Husband, Brother's Wife, Sister's Husband.
- **Secretarial standards with respect to General Meeting and Board meeting have been introduced. [clause 118(10)]**

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