



The Institute of Chartered Accountants of India
Western India Regional Council

Intensive Workshop on Companies Act, 2013

[from SME Perspective]

Date: 7th July, 2014

Venue: Seminar Room [Mayor Hall], C D Barfiwala Marg,
Andheri (West), Mumbai - 400 058.

Topics

- Appointment and Qualifications of Directors
- Board Meetings
- Compliance procedures
- Annual Returns
- Registration of charges
- AGM

Faculty

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Jointly with Andheri West CPE study circle

COMPANIES ACT, 2013

**Appointment and qualification of Directors,
Board Meeting, Annual Returns, Registration of
charges, AGM etc under Companies Act,2013.**

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OVERVIEW OF COMPANIES ACT, 2013

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Committees of Board:

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- ❖ Nomination and Remuneration Committee &
- ❖ Stakeholders Relationship Committee,
- ❖ CSR Committee)

Mandatory implementation of Risk Management policy, Internal Audit and Secretarial Audit

General Meetings & Board Meetings

Annual Return, Registration of charges

Why there was a need for change? Benefits...

Why there was need for change?

- Big scams like Satyam, Sahara etc. influenced to change the existing law.
- For smooth and seamless application of corporate governance to all companies.
- Old Companies Act was a voluminous document, very procedural in nature and prescribed certain quantitative limits which were irreverent on account of changes in economy.
- Change in any provision requires an amendment of the law through the parliamentary process.

Benefits of re-enacting the new Companies Law:

- Bringing flexibility & adoption of Internationally accepted practices
- Aligned to “Comply” or “Explain” approach being used in mature markets
- Stringent punishment for violation
- Effective protection for different sections of society

“There is evidence of a steady erosion in trust for established authorities. As trust diminishes, so increases the demand for transparency”
-Tom Delfgaauw

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Silent features of The Companies Act, 2013:

<u>Companies Act, 2013</u>	<u>Companies Act, 1956</u>
29 Chapters	13 Parts
470 Sections	658 Sections
7 Schedules	15 Schedules
<ul style="list-style-type: none"> • Till date total 282 Sections & Rules for 23 chapters are notified • Substantial part of the Act is from Rules (418 places it has prescribed word) 	
<u>New chapters added</u>	<u>Chapter number</u>
Registered Valuers	Chapter 17
Government Companies	Chapter 23
Companies to Furnish Information or Statistics	Chapter 25
Nidhis	Chapter 26
National Company Law Tribunal & Appellate Tribunal	Chapter 27
Special Courts	Chapter 28

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Key definitions relating to Directors:

“Board of Directors” or “Board” - section 2(10):

Board of Directors or Board in relation to a company, means the collective body of the directors of the Company.

Interested Director - section 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;

Managing Director - section 2(54):

“Managing Director” means a director who, by virtue of the articles of a company or an agreement with the company or a resolution passed in its general meeting, or by its Board of Directors, is entrusted with substantial powers of management of the affairs of the company and includes a director occupying the position of managing director, by whatever name called.

“Whole-time Director - section 2(94):

“Whole-time director” includes a director in the whole-time employment of the company.

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Key definitions relating to Directors:

Key Managerial Personnel (KMP) - section 2(51):

- Chief Executive Officer or managing director, or the manager
- the Company Secretary, the Chief Financial Officer, the whole time director
- Such other officer as may be prescribed.

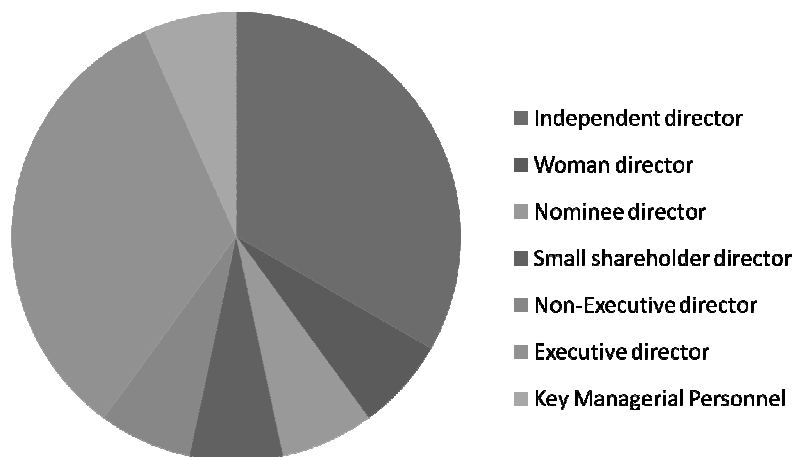
Every listed company and every other public company having a paid-up share capital of Rs 10 crore or more shall have whole-time key managerial personnel. (Section - 203)

As per recent notification dated 09th June, 2014, new provision has been added under Rule i.e. “A company other than a company covered under above provision which has a paid share capital of Rs. 5 crore or more shall have a whole-time company secretary.

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Board Composition under new Act:

Listed Company-BOD Composition



Key changes made on Board Composition:

Maximum number of directors - Section 149(1):

Maximum number of directors have been increased from 12 to 15. A Company may appoint more than 15 directors after passing special resolution at its General Meeting and no approval from Central Govt. is required.

Maximum number of Cap on directorship- Section -165)

Maximum number of directorship can be 20 (should not exceed 10 public companies). However by way of special resolution in general meeting a company can specify any lesser number of directorship.

As per revised Clause-49, applicable from October 1, 2014, a person shall not serve as Independent Director in more than 7 listed company or if he is WTD in any listed company, he can not serve more than 3 listed company as Independent Director.

Woman director mandatory - Section 149(1):

➤ Women director is mandatory for listed company, public limited company having paid up share capital Rs 100 crore or more or turnover of Rs 300 crore or more as on last audited financial statement.

➤ A transitional period of one year has been provided from April 1, 2014.

➤ It will ensure gender diversity on the Boards and may improve the quality of decision making.

➤ Company incorporated under new Act, should appoint woman director within six months of its incorporation.

➤ Vacancy shall be filled-up by the Board within 3 months from the date of such vacancy or on immediate next board meeting whichever is later.

Key changes made on Board Composition:

Small share holder - Section 151

➤As per Old Act, public company having paid up capital INR 5 Crore or more and having 1000 or more small share holders is required to appointment small share holder director. As per New Act, only listed company is required to do so irrespective of paid up capital, upon notice by not less than 1000 small shareholders or 1/10th of total number of small shareholders.

➤Small shareholder: who holds not more than nominal value of shares of Rs. 20,000.

➤Small shareholder can be counted as Independent director subject to fulfilling other requirements.

➤Small shareholder shall not be liable for rotation of director clause.

➤Small shareholder's tenure can not be more than 3 consecutive years and on expiry he shall not be eligible of re-appointment.

➤No person shall hold such directorship position of more than 2 companies.

Domicile of director - Section 149(3):

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. (For 2014-15: number of days should be more than 136 days)

Companies incorporated in between April 2014 to September 2014 should have resident director within six month and companies incorporated thereafter should have resident director from the date of incorporation itself.

Key changes made on Board Composition:

New grounds for disqualification of director:

➤ Permanently debar from directorship of a company if a person has been convicted of any offence and sentenced to imprisonment of 7 years or more. (Section-164)

➤ Two new grounds for disqualification of directors has been introduced:

- convicted of the offence dealing with RPT at any time during last 5 years.
- He has not obtained Director Identification Number (DIN)

Other restrictions:

➤ Purchase/sale of properties by director and others for consideration other than cash requires approval of members.

➤ Directors or Key Managerial Personnel (KMP) are prohibited from entering into forward contract in shares or debentures of the company or holding/subsidiary/associate company.

➤ A total bar is placed on insider trading by any director, KMP or other officers of the company.

Key changes made on Board Composition:

Other key changes:

- Appointment of each director to be voted individually . (Section - 162).
- Consent to act as director to be filed with ROC within 30 days. (Section-152).
- Directors or members who is interested in any contract can not cast his vote on that matter.
- Appointment of Managing Director, Whole Time Director or Manager to be approved by special resolution in a General Meeting.
- Provisions relating to appointment of Managing Director is also applicable to Private Companies. Meaning MD, WTD or Manager can not be appointed for a term exceeding 5 years at a time. (Section-196)
- Pursuant to the provisions of Articles of Association and by passing a special resolution, Company now may pay Sitting fees for directors except Managing and Whole time directors up to Rs 1 Lac per meeting. (Section 197-Rule 4)
- Independent directors not to be included in the total number of directors for the purpose of rotation i.e. $\frac{2}{3}$ rd of the total number of directors in the case of public company.

Independent directors: (Legal Requirement)

As per Companies Act, 1956:

- Not applicable to unlisted companies (Both private and public)
- As per SEBI Listing agreement which is only applicable to listed company:
 - If chairman is executive - $\frac{1}{2}$ of total directors
 - If chairman is non-executive - $\frac{1}{3}$ rd of total directors. (provided non-executive chairman shall not be promoter or related to promoter group)

As per Companies Act, 2013:

- Requirement:
 - 1/3 or 1/2 of total directors to be independent in the case of listed company or minimum 2 Independent directors in the case of unlisted public company.
- Applicability:
 - To all listed Companies (As per SEBI listing agreement)
 - Companies notified by Central Govt.
 - a) Public company having paid up share capital Rs. 10 Cr or more, Or
 - b) Public company having turnover of Rs. 100 Cr or more, Or
 - c) Public Company have, in aggregate, outstanding loans, debentures and deposits, exceeding Rs. 50 Cr
 - Transition period to comply the above provision - till 31st March, 2015.
 - Vacancy shall be filled-up by the Board with in 3 months from the date of such vacancy or on immediate next board meeting whichever is later.
 - Out of this provision- when 3 consecutive years are not covered.

Independent directors "IDs": (Presence under Statute)

No.	As per Clause 49 (SEBI)	As per Companies Act, 2013 (Section 2-47) & Section 149 (6)
1)	apart from receiving director's remuneration does not have any material pecuniary relationships or transactions with the company, promoters, senior management, holding company or subsidiary or associates which affect their independence; (subsidiary, associate defined as per Accounting Standards, JVs not included)	Who or whose relatives has or had no pecuniary relationship with the company, its holding, subsidiary or associate company, or their promoters, or directors, during the <u>two immediately preceding financial years or during the current financial year;</u> (No materiality prescribed, however in the <u>case of relatives-transactions 2% or more of turnover or Rs 50 Lacs whichever is lower</u>) (definition of subsidiary covers 51% of total share capital including convertible preference shares and Associate means 20% of share capital and includes JVs.)
2)	is not related to promoters or persons occupying management positions at the board level or at one level below the board;	who is or was not a promoter or not related to promoters or directors in the company or its holding, subsidiary or associate company;

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Independent directors "IDs": (Presence under Statute)

No.	As per Clause 49 (SEBI)	As per Companies Act, 2013
3)	has not been an executive of the company in the immediately preceding three financial years;	Who, neither himself nor any of his relative: 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 3 financial years immediately preceding the financial year in which he is proposed to be appointed;
4)	is not a partner or an executive or was not partner or an executive during the preceding three years, of any of the following: ➤the statutory audit firm or the internal audit firm that is associated with the company, and ➤the legal firm(s) and consulting firm(s) that have a material association with the company.	Who, neither himself nor any of his relative: ➤is or has been an employee, partner of a firm of auditors, Company secretary, cost auditor of the company, its holding, subsidiary and associate in any of the 3 preceding financial years. ➤is or has been an employee, partner of any legal or consulting firm of the company, its holding, subsidiary and associate in any of the 3 preceding financial years and having transaction 10% or more of Turnover of such firm.

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Independent directors "IDs": (Presence under Statute)

No.	As per Clause 49 (SEBI)	As per Companies Act, 2013
5)	does not own two percent or more of the voting shares of the Company	holds together with his relatives two per cent or more of the total voting power of the company;
6)	is not less than 21 years of age.	Not prescribed
7)	Nominee directors appointed by Financial Institutions, shall be deemed to be ID's.	Managing Director or Whole time Director or a Nominee Director will not be counted for the purpose of ID's. Small shareholder director can be counted as ID.
8)	No such condition	Who, neither himself nor any of his relative, is a Chief Executive or director, of any non-profit organization 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 voting power of the company.

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Independent directors "IDs": (cont'd)

Qualification of ID's:

- An ID 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.

Term:

- **Up to 5 years** original term + 5 years additional term subject to passing of a special resolution and disclosure of such appointment in the Board's report.
- Cooling period of 3 years after completion of two terms. Provided he shall not be appointed and associated with the company in any other capacity, either directly or indirectly during the said 3 years period.
- Any tenure of ID's which has been already served till March 31, 2014 will not be counted. Vs. As per SEBI revised listing agreement, tenure shall be counted.

Code of conduct under Companies Act, 2013:

- Schedule IV prescribes code of conduct for the role, responsibilities and functions of the ID's. Guidelines prescribed for manner of appointment, reappointment, resignation and removal of ID's.
- All ID's together shall hold at least one meeting in a year without the attendance of non-independent directors. ID's shall review the following:
 - a. the performance of non-independent directors and Board as whole, including the chairperson of the company
 - b. to assess the quality and timely flow of information between management and board.

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Analysis of key changes:

- Listing agreement has been amended inline with the new requirements of Companies Act 2013 regarding appointment of Independent directors.
- Listed companies have to revisit the appointment of ID's. As per Act, 2013, ID's to be selected from a data bank maintained by a body and Institute Association. However, no time frame has been prescribed under the Law;
- Mandatory rotation of ID's is a significant change and could pose challenges in its implementation regarding availability of Independent Directors.
- As per New Act, ID's are not entitled to any stock options of the company. No clarity provided for stock options granted in the past and remaining outstanding till date.
- Key attributes prescribed for ID's in the Code of conduct are qualitative in nature.
- Introduction of Class Action suit provides empowerment to minority stakeholders to come together and seek action against the company, directors, external consultants. This will enforce more responsibilities into the role of director.
- ID's are liable only for acts with knowledge and attributable through Board Process and with his consent or connivance or not having acted diligently.

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Powers of Board:

As per Companies Act, 2013, the following additional powers can be exercised by the Board only by passing a resolution at the Board meeting: {Section - 179(3)}

- To issue securities whether in India or outside India
- To give guarantee or provide security in respect of loans;
- To approve financial statement and the Board's report;
- To diversify the business of the Company;
- To approve amalgamation, merger or reconstruction;
- To take over a company or acquire a controlling or substantial stake in another company;
- to make political contributions-(7.5% of average net profit during preceding 3 years)
- to appoint internal auditors and secretarial auditor;
- to buy, sell investments held by the company (other than trade investments);
- to invite or accept or renew public deposits and related matters;
- to review or change the terms and conditions of public deposit;

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Duties of directors:

There are no provisions regarding duties of directors in the Old Act. Section 166 of the Companies Act, 2013 provides the following duties of directors:

- shall act in accordance with the articles of the company;
- Shall 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 interest of the company, its employees, the community and for the protection of the environment;
- shall exercise his duties with due and reasonable care, skill and diligence and shall exercise independent judgment;
- shall 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;
- shall 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.
- shall not assign his office and any assignment so made shall be void.

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Duties of directors:

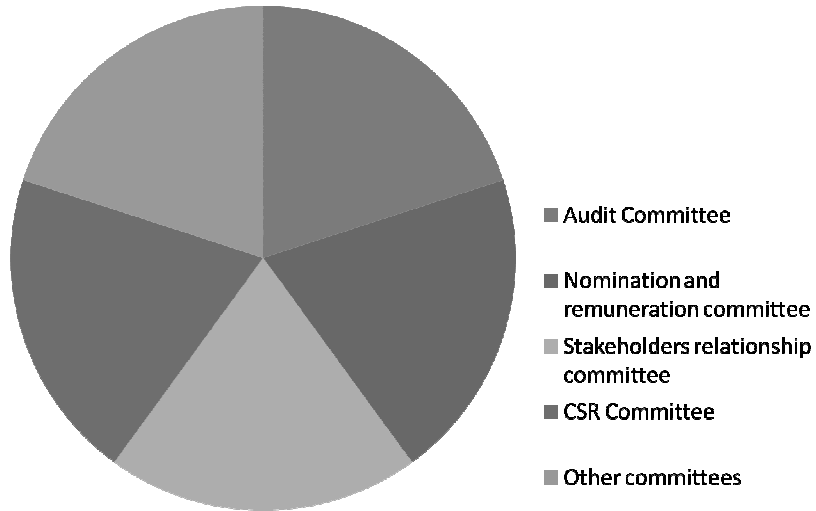
Additional disclosures in the Directors' responsibility statement:

- The boards would have to devise proper systems to ensure compliance with the provisions of all applicable laws and that such systems were adequate and operating effectively
- 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
- Policy on directors' appointment and remuneration has to be articulated
- The Board would have to explain if there are any qualifications in the secretarial audit report
- The boards would have to lay down the manner of formal evaluation of performance of the board, its committees and individual directors for listed and public companies
- The boards would have to lay down its policies for regulatory compliance and risk management and ensure these are operating effectively

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Committees of the Board:

Various Committees



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Audit Committee:

As per 1956 Act (Section 292A)	As per 2013 Act (Section - 177)
Applicability:	
Every public company having paid up capital of not less than Rs 5 crores	<input type="checkbox"/> To all listed Companies <input type="checkbox"/> Companies notified by Central Govt. a) Public company having paid up share capital Rs. 10 Cr or more, Or b) Public company having turnover of Rs. 100 Cr or more, Or c) Public Company have, in aggregate, outstanding loans, debentures and deposits, exceeding Rs. 50 Cr (all criteria as per last audited financials)
Composition:	
Not less than 3 directors and 2/3 rd of total number of members shall be directors other than managing and whole time directors.	<input type="checkbox"/> Minimum of three directors, ID's should form part of majority. (As per SEBI listing agreement- chairperson should be independent) <input type="checkbox"/> Majority of members including chairperson shall have ability to read and understand the financial statements.

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Audit Committee:

As per 1956 Act (Section 292A)	As per 2013 Act (Section - 177)
Role and functions:	
a) have discussion with auditors to understand internal control systems and scope of audit including observations of auditors. Also ensure compliance of internal control system b) review annual and half year financial statements before submission to the Board	a) to recommend appointment, remuneration and terms of engagement of auditors, b) review and monitor the auditor's independence and performance and effectiveness of audit process, c) examination of the financial statement and the auditors' report thereon, d) approval or any subsequent modification of transactions of the company with related parties, and scrutiny of inter-corporate loans and investments, e) valuation of undertakings or assets of the company, wherever it is necessary, f) monitoring the end use of funds raised through public offers and related matters
Existing Audit Committee shall reconstitute as per new law within 1 year or companies which are earlier not covered shall constitute such committee within 1 year or appointment of ID, whichever is earlier.	
Meeting shall be 4 times in a year and gap should not be more than 4 months. Quorum should be 2 member or 1/3 of strength. Minimum 2 ID's should be present.	

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Other committees of the Board:

Whistle Blowing - Sec. 177 (9):

- Every Listed company and company which accept deposit from public and which have borrowed money from bank and FIs in excess of Rs 50 crore shall establish a vigil mechanism for directors and employees to report genuine concerns.
- Audit Committee shall oversee the vigil mechanism or in the absence of Audit Committee BOD shall nominate a director to play the role.
- Details of such mechanism shall be disclosed on company's website and in the Board's report.

Stakeholders Relationship Committee- Sec. 178 (5):

- A company has more than 1,000 shareholders, debenture holders and any other security holders at any time during a financial year shall constitute such committee consisting of chairperson who must be non-executive director and such other members as may be decided by BOD.
- Stakeholders Relationship Committee shall consider and resolve the grievances of security holders of the company.

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Other committees of the Board:

Nomination and Remuneration Committee - Sec. 178:

- Nomination and Remuneration Committee is mandatory for:
 - All listed company
 - Public company: Paid up capital Rs 10 crore or more, Turnover Rs 100 crore or more, outstanding loans and borrowings or debentures or deposits exceeding 50 crore or more as on the last audited financial statements.
- Such committee shall consist of three or more non-executive directors out of which not less than one half shall be independent.
- Chairperson of the company (whether executive or non-executive) may be appointed as a member of such committee but shall not chair such committee
- Said committee will evaluate of every director's performance and shall identify persons who are qualified to become directors and senior management.
- All public companies covered under this rule shall constitute the such committee within one year i.e. March 31, 2015 or appointment of independent directors by them, whichever is earlier (recent notification dated June 12, 2014)

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Corporate Social Responsibility (whether desirable for brand building):

Corporate Social Responsibility (CSR) Obligations have been introduced under section 135 of the Companies Bill, 2013. The companies will have to mandatorily spend 2% of their average net profits during the three immediately preceding financial years for CSR activities.

➤ CSR Provisions in Companies Act 2013 applicable to every company including foreign company having;

1. Net worth of Rs. 500 Crore or more, or
2. Turnover of Rs. 1,000 Crore or more or
3. Net profit of Rs. 5 Crore or more

➤ CSR committee shall have 3 or more directors and shall have minimum 1 independent director which shall -

- Formulate and recommend policy and choose activities out of schedule VII
 - Recommend amount of expenditure to be incurred and Monitor such policy
- Board approved policy - content to be disclosed in Board's report and on Company's website.

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CSR:

- Net profit should be calculated in accordance with section 198 of Companies Act, 2013
- Net profit should be before tax and shall not include profits from overseas branches
- Net profit shall not include any dividend received from other companies in India, which are covered under and complying with the CSR provisions
- Contribution can be given to a trust formed by the Company provided:
 - It is for specific projects or programmes
 - There is monitoring mechanism in place
- Company can contribute to unrelated trust having track record of at least 3 years in carrying such activities in related areas.
- Company can be out of CSR ambit only if the conditions given are not satisfied for 3 consecutive years.
- CSR activities that benefit only the employees of the company and their families shall not be considered as CSR activities.

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CSR:

- Contribution directly and indirectly to any political party shall not be considered as CSR activity.
- CSR Policy shall include the following:
 - A list of CSR projects, specifying modalities of execution of such project or programs and implementation schedules for the same
 - Monitoring process of such programs and projects
 - CSR policy shall specify that the surplus arising out of the CSR projects or programs shall not form part of the business profits of the company.
- 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.
- If the company fails to spend such amount, the Board shall, in its report specify the reason for not spending the amount.
- Whether provision required in the P&L account?

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Internal and Secretarial Audit:

- Internal Audit is mandatory by Law to the following companies: (Section- 138)
 - All listed company or,
 - Public company: Having Paid up share capital Rs. 50 crore or more, Turnover Rs. 200 crores or more, outstanding borrowing from banks or public financial institutions Rs 100 crore or more, outstanding deposits of Rs 25 crore or more at any point of time during preceding financial year or,
 - Private company: Turnover Rs 200 crore or more, outstanding borrowing from banks or public financial institutions Rs 100 crore or more at any point of time during preceding financial year.
- Transitional provision: within 6 months of commencement of such section.
- Internal auditor may or may not be an employee of the Company.

Secretarial audit is mandatory for: (Section - 204)

- All listed company or
- Public company having paid up share capital of Rs 50 crore or more, turnover of Rs 250 crore or more.

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Board Meetings & related matters:

- | |
|---|
| ➤ First Board meeting to be held on 30 days of incorporation of company. |
| ➤ Notice of Board meeting shall be given to all directors, whether he is in India or outside India by hand delivery or by post or by electronic means. |
| ➤ At least one independent director to be present at a Board Meeting called at shorter notice to transact urgent business. |
| ➤ In case of absence of independent directors from board meeting, decisions taken at meeting shall be circulated to all the directors and shall be final if ratified by a independent director. |
| ➤ At least 4 Board meetings should be held each year, with a gap of not more than 120 days between two Board meetings (no requirement of holding Board Meeting in every quarter). |
| ➤ Director shall vacate office if he absents himself from all the Board meetings happened during a period of twelve months with or without leave approval. (Section -167). |
| ➤ Director can participate in the Board meeting through video conferencing or other audio visual mode. |

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Board Meetings through Video Conferencing:

Directors can participate through video conferencing or through other audio visual means provided the meeting should be recorded and stored properly. Major responsibility casted upon the Chairman of the company & Company Secretary.

MATTERS NOT TO BE DEALT IN MEETING THROUGH VIDEO CONFERENCING:

- approval of financial statement,
- board's report,
- approval prospectus,
- audit committee meeting for consideration of accounts and
- approval of matter relating to acquisition, merger etc

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General Meetings & related matters:

- One Person Company not required to hold AGM.
- First AGM to be held within 9 months from closure of first Financial Year and in any other case, within a period of six months, from the date of closing the financial year.
- AGM to be held on between business hours i.e. 9 AM to 6 PM on any day that is not a national holiday.
- Notice of AGM may be sent to electronic mode and auditors attendance is mandatory.
- Every listed company to prepare a report on each AGM and contains confirmation that meeting was convened, held and conducted. Also, listed company is required to file the same with Registrar within 30 days of AGM.
- In the case of a public company, quorum for meetings are as under:

Number of Member	Quorum
>=1,000	5 members personally present
>1000 & <=5000	15 members personally present
>5000	30 members personally present
- Single person not to be proxy for more than 50 members
- Every listed company or a company having not less than 1000 shareholders, shall provide to its members electronic voting facility. (relaxation given till December 31, 2014.

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Annual Return: (Section-92)

Additional requirements as compared to Old Act:

Certification requirement:

➤ As per New Act, Annual Return of listed company or a company having paid up share capital of Rs 10 Crore or more OR Turnover of Rs 50 Crore or more, shall be certified by a Company Secretary in practice.

➤ Penalty to be imposed under New Act, if there is non-compliance of this section on Company secretary. (Rs.50,000 to Rs 5 Lacs)

Additional disclosure requirement:

➤ Company's promoters, directors, KMPs along with changes therein since the close of the last financial year should be disclosed

➤ Meeting of members, board and various committees details to be disclosed

➤ Remuneration of directors and KMPs to be disclosed

➤ Penalty or punishment imposed on the company, its directors or officers and details of compounding to be disclosed

➤ Details of shares held by or on behalf of the foreign institutional investors

➤ The extract of Annual Return to be attached with Board's Report.

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Registration of Charges: (Section-77 - 87)

➤ "Charge" means 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. Sec 2 (16).

➤ A company creating a charge, shall register the particulars of the said charge with the ROC within 30 days of its creation. This charge could be:

✓ on its property or assets or any of its undertakings

✓ whether tangible or otherwise

✓ situated in or outside India

✓ signed by both the company and the charge-holder

✓ together with the instruments creating the charge

➤ ROC may on application by the company, allow this registration within 300 days on payment of additional fees. If not within 300 days, company to seek extension of time from Central Government.

➤ ROC shall issue a certificate of registration or modification of such charge in prescribed form and this shall be conclusive evidence.

➤ The liquidator or any other creditor shall not take into account any charge created unless registered with the Registrar and said certificate obtained from ROC.

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Registration of Charges: (Section-77 - 87)

- Section 124 and 125 of Old Act, provides that expression “Charge” includes a mortgage and provides a list of charges requiring registration. And, pledge transaction did not require registration by the companies.
- However, as per New Act and final Rules, there is no prescribed list of charges which need to be registered and accordingly all charges now require registration with the Registrar.
- This means that now pledges, which were earlier exempted from registration requirements under the Act, 1956, would now be required to be registered with the Registrar. All procedures thereafter relating to entry in the register of charges and modification and / or satisfaction of charges would also need to be complied.
- Also the proposed exemption to hypothecated motor vehicles from registration under the draft rules, has also been withdrawn under these Final Rules.
- Every company shall keep at its registered office a register of charges which shall include therein all charges.

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Thank You

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