

Companies Act, 2013

- Various Provisions

- Anand Banka

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What is Company?

- o Latin word
- o Com = with or together
- o Pains = bread
- o OPC?

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Directors

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Appointment & Qualification

- Mandatory to have at least one woman director for prescribed class of companies
- At least 1 director shall have stayed in India for a total period of not less than 182 days in the previous calendar year
- Maximum limit of directors has been increased to 15 from 12
 - Can be increased further by passing a special resolution
 - No requirement for CG approval

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Appointment & Qualification

- Max directorships is 20 Companies instead of 15
- Out of this 20, maximum 10 public companies (including pvt. ltd. Holding/ Subsidiaries)

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Resignation

- Resignation by notice to company
- Resignation with detailed reasons to be forwarded to Registrar

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Removal

- o Only prescribed number of members can pass a resolution for removal of a Director:
 - o Members holding 1/10th of voting power
 - o Members holding shares valued at an aggregate of Rs. 5 Lakhs or more
- o Great relief from frivolous application for removal of directors by small shareholders holding 1 share only

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Miscellaneous

- o The Director's Report for every Company except for One Person Company, shall have to provide
 - o number of meetings of the Board,
 - o Company's policy on directors' appointment and remuneration,
 - o explanations or comments by the Board on every qualification,
 - o reservation or adverse remark or disclaimer made by the Company Secretary in his secretarial audit report,
 - o particulars of loans, guarantees or investments etc.

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Miscellaneous

- o The Directors responsibility statement in case of listed company shall include
 - o additional statement related to internal finance control and
 - o compliance of all applicable laws
- o Penalty for tampering with minutes
 - o 2 years of imprisonment and
 - o fine which shall not be less than Rs. 25,000 but which may extend to Rs. 100,000.

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Independent Director

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Independent Director

- o Listed public company shall have at least 1/3 of the total number of directors as independent directors
- o Independent directors not entitled to stock options. This is contrary to the Listing Agreement, where the maximum limit can be fixed by shareholders resolution
- o Term of 5 years + 5 years and then cooling period of 3 years
- o The company and independent directors to abide by Code for independent directors -Code of professional conduct- guidelines, role and functions, duties, etc. defined

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Independent Director

- o 'Independent Directors' excluded for computing 'one third of retiring Directors'
- o Independent director to be held liable only for acts of omission or commission by company
 - o which had occurred with his knowledge and
 - o with his consent or connivance or
 - o where he had not acted diligently

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Who cannot be Independent Director?

- o Managing Director/Whole Time Director/Nominee Director
- o Any promoter of company, holding and subsidiary company
- o Any relative of promoters or directors of company, holding and subsidiary company
- o Any person having any monetary relationship with the co., hol co., sub co, promoters, directors during last 2 FYs and Current FY

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Who cannot be Independent Director?

- o Any person whose relative has any monetary relationship with the co., hol co., sub co, promoters, directors during last 2 FYs and Current FY in excess of 2% of Gross Turnover/Total Income or Rs. 50 lakhs whichever is lower.
- o Any KMP or employee of the co, hol and sub co during last 3 years
- o Any relative of KMP or employee of the co, hol and sub co during last 3 years

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Who cannot be Independent Director?

- o Any person who himself or his relative is a proprietor, partner or employee of statutory auditor firm, firm of PCS and firm of Cost Accountants during last 3 Fys pertaining to co, hol co or sub co.
- o Any person who himself or his relative is a proprietor, partner or employee of legal or consulting firm having transaction during last 3 Fys with co, hol co or sub co. in excess of 10% of its turnover

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Who cannot be Independent Director?

- o Any person who along with his relatives holds more than 2% of voting power of company
- o Any CEO or director of a NPO which receives 25% or more of its receipts from the company, hol co, sub co, company's promoters, directors
- o Any CEO or director of a NPO which holds more than 2% of the voting power of the company

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Summary

TYPE OF COMPANY	INDEPENDENT DIRECTOR	WOMAN DIRECTOR
Private Company	1 Independent Director on Corporate Social Responsibility (CSR) Committee if CSR requirement is triggered	
Public Unlisted Company	1/3 rd of the Board to be Independent if the Company has: <ul style="list-style-type: none"> • Paid-up share capital of INR 100 crores or more; or • Aggregate outstanding loans, borrowings, debentures or deposits exceeding INR 200 crores 	Required if paid-up share capital > INR 100 crores (to be appointed within 5 years) from the commencement of the Act
Listed Company	<ul style="list-style-type: none"> • All listed companies to have 1/3rd of the Board comprised of Independent Director • Requirement increases to half of the Board if there is an executive chairman (Clause 49, Listing Agreement) 	All listed companies to have a woman director (to be appointed within 1 year) from the commencement of the Act

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Summary: Committees

TYPE OF COMPANY	AUDIT COMMITTEE	NOMINATION & REMUNERATION COMMITTEE	CSR COMMITTEE	STAKEHOLDER RELATIONSHIP COMMITTEE
Private Company	Not applicable	Not applicable		Not applicable
Public Unlisted Company	Both committees required if the company has: <ul style="list-style-type: none"> • Paid-up share capital of INR 100 crores or more; or • Aggregate outstanding loans, borrowings, debentures or deposits exceeding INR 200 crores 		Independent Director required on CSR Committee if: <ul style="list-style-type: none"> • Net worth ≥ INR 500 Crores • Turnover ≥ INR 1000 Crores • Net profit ≥ INR 5 crores 	Applies if the company has 1000 or more shareholders
Public Listed Company	Applicable			Applies if the company has 1000 or more shareholders

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One Person Company (OPC)

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Features

- o OPC means a company which has only one person as a member
- o Incorporation
 - o Will be formed as a private company
 - o Name of the nominee who will continue in event of death to be specified
 - o Words "One Person Company" to be mentioned below name
- o Natural Person, Citizen of India, Resident of India
- o Maximum 5 OPC per person incl. nominees
- o Max T/o = 2 Crores

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Meetings

- o No AGM required
- o No Board Meetings required in case of only one Director
- o Entering resolutions in minutes book is sufficient
- o Minutes to be signed and dated

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Summary

Director

Minimum one director required

Subscriber to MOA deemed to be first director till director is duly appointed

Accounts

No cash flow statement

Accounts to be filed within 180 days of FY

Board's report to contain only response to auditor's qualification

Signing

Financial Statements can be signed by one director alone

Annual Return to be signed by CS, if appointed, else by one director

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Contracts by OPC

- o In case a One Person Company enters into any contract, **not in the ordinary course of business**, with its sole member **who is also a director**, then such contract must
 - o either be in writing, or
 - o entered in the Memorandum, or
 - o recorded in the minutes of the meeting held for the first time after entering of the contract
- o and the particulars of the said contract must be filed by the company with the Registrar within 15 days of the approval of the contract by the Board.

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Small Company

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DEFINITION

Small Company

- Not a public company
- Paid up capital \leq 50 Lakhs (may be prescribed upto Rs. 5 crore), OR
- Turnover as per last P/L \leq 2 Crores (may be prescribed upto Rs. 20 crore)

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Salient Features

- Private company
- Not a small company –
 - Holding company
 - subsidiary company
 - charitable company and
 - company governed by any Special Act
- Status may change from year to year
- Thus the benefits which are available during a particular year may stand withdrawn in the next year and become available again in the subsequent year

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Benefits

- o Accounts
 - o Cash Flow Statement not required
- o Annual Return
 - o The annual return may be signed by a Company Secretary. Where there is no company secretary, by the director of the Company
- o Board Meeting
 - o At least one board meeting in each half of a year and gap between two not less than 90 days

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Dormant Company

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DEFINITION

Dormant Company

- o company formed for a future project or to hold an asset or intellectual property and has no significant accounting transaction or an inactive company
- o Application to be made to the Registrar for obtaining the status of a dormant company

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DEFINITION

Inactive Company

- o Not been carrying on any business or operation; OR
- o Not made any significant transaction during last two years; OR
- o Not filed financial statements and annual returns during the last two financial years

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Benefits

- o Accounts
 - o Cash Flow Statement not required
- o Board Meeting
 - o At least one board meeting in each half of a year and gap between two not less than 90 days

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Related Party Transactions

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Relative...

- o Spouse
- o Father/ Mother (incl. step)
- o Grandfather/ Grandmother (Father's side and mother's side)
- o Son / Daughter (incl. step)
- o Son's wife, Son's son, Son's daughter
- o Daughter's husband
- o Brother/ Sister (incl. step)

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Related Party...

- o director or his relative;
- o KMP or his relative;
- o firm, in which a director, manager or his relative is a partner;
- o private company in which a director or manager is a member or director ;
- o 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;
- o any body corporate whose BoD, managing director, or manager is accustomed to act in accordance with the advice, directions or instructions of a director or manager;
- o any person under whose advice, directions or instructions a director or manager is accustomed to act;
- o any company which is—
 - o a holding, subsidiary or an associate company of such company; or
 - o a subsidiary of a holding company to which it is also a subsidiary
- o such other persons as may be prescribed
 - o a director or KMP of the holding, subsidiary or associate company of such company or his relative or any person appointed in senior management in the company or its holding, subsidiary or associate company

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New provisions

- o Prior consent of the Board and no Central Government permission
- o Interested Director not to remain present at the Board meeting
- o A related party transaction can be entered into only if it is approved by a special resolution at the general meeting:
 - o where the company has paid-up share capital, which is not less than INR 1 crore;

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New provisions

- o Transactions amount (individually or taken together with previous transactions during a financial year) exceeds 5% of the annual turnover or 20% of the net worth of the company as per last audited financial statements, whichever is higher;
- o Transaction relating to appointment to any office or place of profit in the company, its subsidiary or associate company at a monthly remuneration exceeding INR 1 lakh; or
- o Is for a remuneration for underwriting the subscription of any securities or derivatives exceeding INR 10 lakhs.

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New provisions

- o includes selling, buying and leasing of property
- o transactions including the reasons for entering into it to be included in the Board's report to the shareholders
- o Shareholder's approval for non-cash transactions with Directors of the company, its holding, its associated company, or a person connected with him would be required

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Rules

A company shall enter into any contract or arrangement with a related party with prior consent of the BOD by a resolution at a board meeting. The notice of the Board meeting shall disclose-

- o name of the related party and nature of relationship;
- o nature, duration of the contract and particulars of the contract or arrangement;
- o material terms of the contract or arrangement including the value, if any;
- o any advance paid or received for the contract or arrangement, if any; and
- o any other information relevant or important for the BOD to take a decision on the proposed transaction.

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Corporate Social Responsibility

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Features

- o Following companies should constitute a CSR Committee
 - o Net worth \geq Rs. 500 crores; OR
 - o Turnover \geq Rs. 1,000 crores; OR
 - o Net Profit \geq Rs. 5 crores
- o 2 Directors + 1 Independent Director
- o Committee to formulate CSR policy and monitor implementation

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Responsibility

- o Atleast 2% of Avg Net Profit of last 3 years is spent
- o Non-compliance reason to be specified in board report
- o Amount incurred to be disclosed by way of footnote to profit or loss

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Scheme of Arrangements

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Glimpse

- o National Company Law Tribunal authorised to approve compromises or arrangements instead of High Court
- o Allows postal ballot (previously it was mandatory to be present at the meeting in person or through proxy)
- o Auditors' certificate regarding compliance with accounting standards to be submitted to Tribunal before passing of order
- o Transferee company shall continue as unlisted company

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Glimpse

- o Meeting of creditors may be dispensed with by the Tribunal, if at least 90% of creditors (in value) agree to the scheme by way of an affidavit
 - o Currently - discretion of HC
- o Any objection to the compromise or arrangement shall be made only by
 - o persons holding not less than ten per cent of the shareholding or
 - o having outstanding debt amounting to not less than five per cent of the total outstanding debt

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Simplified procedure for small companies and Group companies

- o two or more small companies or
- o between a holding company and its wholly-owned subsidiary company
- o The authority to sanction the scheme in this case is given to the Regional Director (Central Government) instead of the Tribunal

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Issues

- o No transitional provisions
 - o A Scheme of Restructuring typically takes a time of 3 to 6 months to complete
 - o Restructuring initiated prior to enactment??

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ThanQ?

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