

**OVERVIEW OF
COMPANIES ACT, 2013
(small & medium practioner's prospective)**

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The Companies Act, 2013

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Time line

- ☐ 18 Dec., 2012 Passed by Lok Sabha
- ☐ 8th August, 2013 passed by Rajya Sabha
- ☐ 29th August 2013 got President's assent
- ☐ 30th August 2013 Gazetted as Act no. 18 of 2013
- ☐ 12th September 2013 98 Sections notified
- ☐ 26th March 2014 183 Sections notified w.e.f. 1.4.2014

CA, 2013 vs. CA, 1956

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	CA, 2013	CA, 1956
CHAPTERS	29	13
SECTION	470	658
SCHEDULE	7	15
RULES	400 Approx.	Nil

**NEW
CONCEPTS**

One Person Company :Section 3(1)(c)

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- Only natural person and Indian citizen and resident is eligible.
- A company which has only one person as member.
- OPC shall be private company.
- MOA to indicate the name of the person who shall become member in case of death or his incapacity to contract.
- Consent of that person to be filed with ROC.
- Other person can withdraw his consent any time.
- Member can change the name of other person at any time.
- "One person company" has to be mentioned in (bracket) below the name of company.

One Person Company [Section 3(1)(c)]

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Rule 3 :

- No person shall be entitled to incorporate more than 1 OPCs.
- In case one member of OPC becomes the member in another OPC by virtue of his being nominee in that OPC. He/she shall meet the criteria of OPC in 180 days.
- OPC cannot be for Section 8 company.
- OPC cannot do the business of NBFC.

One Person Company [Section 3(1)(c)]

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One Person company to convert into Public or Private company (within 6 months)

- When paid up capital exceeds Rs.50,00,000/-
or
- Average annual turnover exceeds Rs.2,00,00,000/- at the last day of relevant period OPC shall cease to continue as OPC.

One Person Company [Section 3(1)(c)]

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- OPC cannot be converted into any other kind of company unless:

2 years have expired after incorporation

or

Its threshold limit of capital/ turnover increased.

Conversion of private company to OPC

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- ❖ A private limited company can be converted into OPC
- ❖ By passing Special Resolution
- ❖ And
- ❖ NOC from creditors and members

One Person Company [Section 3(1)(c)]

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- ❖ **Procedure for conversion:**
- ❖ File S/R with ROC along with
 - a) Application (INC 6).
 - b) Declaration of Directors about turnover / capital.
 - c) List of members / creditors
 - d) Latest audited Balance Sheet.
 - e) NOC from secured creditors.

REGISTERED VALUERS (Section 247)

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- ❑ To be Appointed by Audit Committee or by Board.
 - ▣ For the Valuation of shares, net worth, assets and liabilities.
 - ▣ Qualification and experience to be prescribed by way of rules.
 - ▣ Draft Rules :
 - ❑ CA, CS, Cost Accountant
 - ▣ Merchant Banker
 - ▣ Chartered Engineer
 - ▣ Chartered Architect or Any person holding equivalent qualification

ROLE OF REGISTERED VALUERS

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- ❑ Under Section 62(1)(c) – For further Issue of Shares (authorised by a Special Resolution); price is required to be determined by Valuation Report of Registered Valuer subject to such conditions as may be prescribed.
- ❑ Under Section 192(2) – Restriction on Non Cash transactions involving directors – Value of assets involved in such arrangement is to be calculated by a Registered Valuer.
- ❑ Under Section 230(2)(v) – Compromise / Arrangement – The shares and the property and all assets, tangible and intangible, movable and immovable, of the company shall be valued by a Registered Valuers.

ROLE OF REGISTERED VALUERS

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- ❑ Under Section 236(2) – Purchase of Minority Shareholding – At a price determined on basis of valuation by a Registered Valuer in accordance with such rules as may be prescribed.
- ❑ Under Section 281(1) – Submission of Report by Company Liquidator – The valuation of the assets shall be obtained from Registered Valuer.
- ❑ Under Section 305(2)(d) – Declaration of Solvency – in case of voluntary winding up – Declaration of solvency has to be accompanied by the report on the assets of the Company prepared by a Registered Valuer.

DORMANT COMPANY (Section 455)

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Where a company is formed and registered for a future project

or

To hold an asset or intellectual property
and

ii) Any inactive company.

can apply for obtaining status of Dormant Company.

(Inactive Company means a company not carrying on any business or operation or has not made any significant accounting transaction during last 2 financial year or has not filed financial statement and Annual Returns during last 2 years).

DORMANT COMPANY

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Significant Accounting Transaction:

Any transaction other than:

- Payment of fee to Registrar.
- Payment to fulfill the requirement of this Act or any other law.
- Allotment of Shares to fulfill the requirement of this Act .
- Payment for maintenance of office or record.

DORMANT COMPANY

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Conditions Rule (3):

- Pass the special resolution.
- No inspection, inquiry or investigation (Pending)
- No prosecution (Pending)
- No public deposit outstanding in default.
- No secured or unsecured loan outstanding.
- No dispute in management.
- No statutory dues.
- No workman dues.
- Company is not listed company.
- Only for 5 years.

DORMANT COMPANY

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- v) ROC on application shall allow the status of dormant company and will issue a certificate (App MSC 1)
- vi) ROC may also suo-moto enter the name of any company in Register of Dormant Companies.
- vii) Dormant company shall have minimum no. of directors and
- viii) file return of dormant company duly audited in MSC 3 within 30 days from close of financial year, to retain its dormant status
- ix) Dormant company may become active company on an application filed by company (MSC 4)
- x) ROC shall strike the name of dormant company which has dormant status for more than 5 years.

Fast Track Amalgamation & Merger (Section 233)

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Section 233 provides for the merger/ amalgamation of:

- Holding and wholly owned subsidiary companies.
- Small companies
- Any other company as may be prescribed.

Eligibility : Consent of **90%** of each class of shareholders and the creditors and

Solvency declaration of all the companies to be sent to the Registrar of Companies.

Determination of Sickness (Section 253)

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- ❖ Any kind of company can be declared as sick, not only industrial undertaking.
- ❖ Not on the basis of erosion of networth.
- ❖ If company fails to pay 50% or more of secured creditors within 30 days from the service of notice.
- ❖ Such creditors can apply to Tribunal.
- ❖ Company can also apply for sickness.

Punishment for Fraudently inducing persons to Invest Money (Section 36)

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- ❑ Any person who, either **knowingly** or **recklessly** makes any
 - statement,
 - promise or
 - forecast

which is false, deceptive or misleading, or deliberately conceals any material facts, to induce another person to enter into

- (a) any agreement for acquiring, disposing of, subscribing for, or underwriting securities; or
- (b) any agreement with object to secure any profit from the yield of securities or fluctuations in the value of securities; or
- (c) any agreement for, or with a view to obtain credit facilities from any bank or financial institution,

shall be liable for action u/s 447

Explanation to Section 447 defines fraud which means:

- ❖ Any act or omission,
- ❖ Concealment of fact or
- ❖ Abuse of position of any person (by him or herself or by any other person in connivance in any manner).
- ❖ With the **intent to deceive**
- ❖ to gain undue advantage to injure the interest of company, or its shareholders or creditors or any other person (whether or not there is any wrongful gain or loss).

FRAUD

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- ❖ Report to Board seeking reply within 45 days.
- ❖ Auditor has to report above fraud to the C.G. (within 15 days from the receipt of report)
- ❖ If reply not received, Audit shall forward his report to CG within time prescribed (60 days).
- ❖ Report by speed post and e-mail to Ministry of Corporate Affairs.

Punishment for not reporting fraud:

- ❖ Fine Rs. **1lakh to Rs 25 lakh.**

**AUDIT
AND
ACCOUNTS**

Books of Accounts

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Every company shall prepare & keep at the registered office.

- ☐ Books of Accounts,
- ☐ Other relevant books and papers and
- ☐ Financial Statement For
- ☐ every Financial year
- ☐ on accrual basis
- ☐ on double entry system

Financial Statement (Section 129)

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- Every financial statement
 - Shall give **true and fair view**.
 - Shall **comply with accounting standard**
 - Shall be in form of **Schedule III**.

Financial Statement (Section 129)

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- **Books of accounts(Section2(13))**
 - All money received and expended
 - All sales and purchases of goods and services
 - All assets and liabilities
 - Items of costs (Section 148)

FINANCIAL STATEMENTS

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Books & Papers: Section 2(12)

- Books of accounts
- Deeds, Vouchers, writings, Documents, minutes and registers.

FINANCIAL STATEMENTS

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Financial Statements: Section 2(40)

- Balance sheet,
- Profit & Loss account,
- Cash flow statement,(not for OPC, small company & dormant company).
- Statement of **change in equity** (if applicable)

FINANCIAL STATEMENTS

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Financial Year : Section 2(41)

- ❑ 31st march every year.
- ❑ For 1st year of incorporation
- ❑ If incorporated before 1st January– 31st March same year.
- ❑ Otherwise -- 31st march of next financial year.
- ❑ Transition period – 2 years

Consolidated Financial Statements

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- Consolidated financial statement to be prepared all subsidiaries and
- shall be placed before the AGM. (Section 129 (3)).
- Subsidiary includes Associates and Joint venture companies.

Books of Account in Electronic Mode

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- A company may keep in **Electronic Mode** in such manner as may be prescribed.
- **Rule 3 of (Companies Account) Rule, 2014 :-**
 - To remain accessible in India so as to be **usable for subsequent reference**.
 - To be retained in the **same format** in which originally generated.
 - To remain complete and **unaltered**.
 - To be capable of being **legible**.
 - To have proper system of **storage, retrieval, display or print out of electronic record**.

Books of Account in Electronic Mode

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- Records shall be disposed off or rendered unusable unless permitted by law.
- Back up of the books of accounts in the servers physically located in India.
- Intimation to ROC:-
 - Name of the service provider
 - Location of the service provider
 - Internet protocol address of the service provider
 - If books of accounts are maintained on cloud, address of the service provider

Financial Statement

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➤ Financial statement shall be laid at every Annual General Meeting.

➤ **Punishment:-**

Officer in default with imprisonment upto one year or with fine from Rs.50,000/- to Rs.5,00,000/- or both.

A company shall not reopen its books of accounts and not re-cast its financial statement unless

- a) An application in this regard is made by :
- ▣ Central Government
 - ▣ Income tax authorities
 - ▣ Security and Exchange Board
 - ▣ Any other statutory regulatory body or authority

- b) An order in this regard is made by Court or Tribunal to effect that:
 - ▣ The relevant earlier accounts were prepared in **fraudulent manner.**
 - ▣ The affairs of the company were **mis-managed** during relevant period **casting the doubt on reliability of financial statement.**
- c) The accounts so revised or re-cast **shall be final.**

If it appears to the Board that financial statement or Board Report **do not comply the provisions of section 129 & 134**, they may prepare revised financial statement /Board report.

Conditions:

- not beyond **3 preceeding financial year**
- not more than **once in a financial year**.
- reasons shall be disclosed in Board's Report.
- with the **approval of Tribunal**
- **copy** of order of tribunal shall be filed with ROC.

- **Application** to tribunal within **2 weeks** from the decision of Board.
- Disclosure in application for **change of Auditor or majority of Director**.
- Tribunal shall issue notice and hear auditor on original financial statement.
- Copy of order to ROC (30 days)
- **General Meeting** shall be called
- **Notice** of General Meeting with reason for revision **shall be published**
- Revised F/s and B/R shall be **placed for adoption**.
- Revised statement / BR shall be filed with ROC (30 days)
- Word revised be pre-fixed.

Board Report

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- Shall be prepared based on financial statement.
- Shall contain **separate sections** for the position of each subsidiary, associate and **joint venture company**.
- Every listed company and other limited company having paid up share capital more than Rs.25.00 crores shall include the statement undertaking the **annual evaluation made by Board of its own performance**.
- Details of material order passed by court, tribunal impacting going concern status and company's operation in future.

Board Report

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Shall also include:

- ❑ Extracts of annual Return
- ❑ No. of Board meetings.
- ❑ Directors responsibility statement.
- ❑ Statement of declaration by independent director.
- ❑ Explanations/comments on adverse comments, qualifications or disclaimer by auditor.
- ❑ Particulars of loans, guarantees or investment (186)
- ❑ Particulars of related party transaction(188)

FORMATION OF NATIONAL FINANCIAL REPORTING AUTHORITY (Section 132)

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The new Companies Act, 2013 provides the formation of the National Financial Reporting Authority, it is rather conversion of present existing NACAS, National Advisory Committee on Accounting Standard.

SCOPE OF NFRA (in brief) :-

- a) To make recommendations to the Central Government on the formulation and laying down of accounting and auditing policies and standards;
- b) To monitor and enforce the compliances;

- c) Oversee the quality of service of the professionals;
- d) Power to investigate either suo-moto or reference by the Central Government relating to mis-conduct by any professional.
- e) The authority will have quasi-judicial powers.
- f) Penalties. In case of individual not less than Rs.1.00 lac and may extend upto 5 times of the fee received.
- g) In case of firm not less than Rs.10.00 lacs and may extend upto 10 times of the fee received.

- h) Debarring members for minimum six months to ten years from the profession.
- i) Once NFRA has initiated any proceedings, no other institute or any organization shall initiate or conduct any proceedings relating to such matter.

Corporate Social Responsibilities (Section 135)

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Every company during **any financial year** having :

- a) Net worth of Rs.500.00 crores or more or
- b) Turnover of Rs.1000.00 crore or more or
- c) Net profit of Rs.5.00 crores or more
- d) Such company shall constitute **CSR Committee** consisting of three or more directors out of which one shall be independent Director.

Role of the Committee:

- To formulate and recommend to the board, the CSR policy for the activities mentioned in Schedule-VII.
- Recommendation of the amount of the expenditure be incurred.
- Monitor the CSR policy from time to time

Applicable w.e.f. 1st April 2014. As per Rule 5 of (CSR Policy) Rules 2014.

- Unlisted company are not required to appoint Independent Director in CSR committee
- Private company having only 2 directors shall constitute the committee with such 2 directors.
- In case of foreign company, the committee shall comprise of atleast 2 persons of which one shall be resident in India and other will be nominated by foreign company.

- f) The Board shall disclose the CSR Policy in its Report and on the website of company and ensure that CSR activities are undertaken by Company.
- g) Company shall spend at least **2% of its average net profit** during three immediate financial years for the social responsibilities.
- h) Preference shall be given to local areas where it operate.
- i) In case company does not spend required fund reasons be disclosed in Director's Report.

- ❑ CSR project or program giving benefit only to the employees of the company and other formalities shall not be considered under the CSR activities.
- ❑ Contribute to the political party shall not be considered as CSR activities.
- ❑ The particulars of CSR activities and amount spend shall be disclosed in the board report. In case company not spending any money in CSR, that shall also be reported.
- ❑ The CSR activities undertaken by company shall be hosted on company website.

Eligibility:

- Every listed company.
- Every unlisted public company.
 - Paid up share capital Rs.50 crores or more.
 - Turnover Rs.200 crores or more
 - Outstanding loans and borrowings from bank and public institutions Rs.100 crores or more
 - Outstanding deposits : Rs25 crores or more.

- ❑ Every private company
 - ❑ having turnover of Rs.200 crores or more
 - ❑ Outstanding loans or borrowing of Rs.100 crores or more
 - ❑ Transition period : 6 months w.e.f. 1st April 2014
- ❑ The internal audit may or may not be employee of the company.
- ❑ Internal auditor shall be chartered accountant or cost accountant for such other professional has to be decided by the Board. The audit committee shall formulate the scope, official periodicity or methodology for conducting internal audit.

APPOINTMENT OF AUDITOR (Section 139)

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Government Companies :-

First Auditor : By C&AG within 60 days from the date of incorporation

If not appointed by C&AG : By board within next 30 days

If not appointed By Board : By members within next 90 days

AUDIT & AUDITORS

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Other than Government Companies :-

First Auditor : By board within 30 days from the date of incorporation

If not by Board : By members within next 90 days in EOGM.

AUDIT & AUDITORS

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- ❑ First auditor shall hold office till the conclusion of first AGM.
- ❑ In first AGM auditor shall be appointed till the conclusion of 6th Annual General Meeting and
- ❑ Thereafter every 6th AGM.
- ❑ However, appointment shall be ratified in each AGM.
- ❑ If not ratified BOD shall appoint another auditor after following due procedure.
- ❑ The company shall inform to the Auditor and shall also file notice within 15 days to ROC.

MANDATORY ROTATION OF AUDITORS

(Section 139 (2))

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- ❑ No listed company or any other class of company as may be prescribed shall appoint or re-appoint its auditor.
- ❑ In case of individual – for more than one term of 5 consecutive years.
- ❑ In case of firm – for more than 2 terms of 5 consecutive years.

MANDATORY ROTATION OF AUDITORS

(Section 139 (2))

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(Rule 5 Companies Audit & Auditors Rule, 2014)

OPC and small companies are not covered.

Applicable to following companies:

- All unlisted public company having paid up capital Rs.10 crores or more.
- All private company having paid up capital Rs.20 crores or more.

MANDATORY ROTATION OF AUDITORS

(Section 139 (2))

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- All companies having < threshold limits but having public borrowings from financial institutions and banks > Rs.50 crores or more.

These provisions shall be applicable to all existing companies within 3 years from the date of commencement of this act.

Rule 6 (3)(i):

- Period for which he or it has been holding office as auditor prior to the commencement of Act shall be taken into account in calculation of 5 consecutive years and 10 consecutive years.

MANDATORY ROTATION OF AUDITORS

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- ❑ Where company has two or more auditors, company shall follow the rotation in such manner that all joint auditors do not complete their tenure in same year.
- ❑ Common partners in incoming firm of auditors, or in same network or operation under same trademark will not be eligible.
- ❑ The auditor can again be appointed after gap of 5 years.

MANDATORY ROTATION OF AUDITORS

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- ❑ The shareholders may resolve that the partner and his team shall rotate every year or audit shall be conducted by more than one auditor.
- ❑ Central Government may prescribe rule for rotation of auditors.

Removal of Auditor

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- By Special Resolution and
- Prior approval of CG
- Reasonable opportunity be given

Rule 7

- i) Application to CG within 30 days from the passing of resolution by Board.
- ii) Hold General meeting within 60 days from the receipt of permission from CG for Special Resolution.

Removal of Auditor

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Removal by Tribunal :-

- Auditor acted (directly or indirectly in **fraudulent manner** or
- **Abetted or colluded** in any fraud by or in relation to company or its officer or director.
- Tribunal shall order within 15 days from the date of application by Central Government.
- Such auditor **shall not be eligible** for the appointment as auditor of **5 years** in any company and shall be punishable u/s 447.

Qualification of Auditor

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- A chartered Accountant or firm of chartered Accountants
- LLP can be Auditor
- Only partner who is Chartered Accountant in practice shall be authorised by firm to act and sign on behalf of firm.

Disqualifications (141).

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Following can not be appointed as Auditor:

- 1) A body corporate other than LLP.
- 2) Officer or employee of the company.
- 3) A person who is a partner or is in employment of an officer or employee of company.

Disqualifications (141).

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- 4) If a person or his relative or partner:
 - a) has interest by holding securities in company, subsidiary, holding or associate company for exceeding Rs.1,00,000/-.
 - b) Is indebted to the company, subsidiary, holding or associate company or subsidiary of holding company in excess of Rs.5,00,000/-.
 - c) Has given guarantee or provided security in connection with indebtedness of third person to the company subsidiary, holding or associate or subsidiary of holding company or Rs.100,000/- or more

Disqualifications (141).

63

- 5) A person or firm whose **business relationship** with company, subsidiary or associate company or subsidiary of such holding company or associate company of such nature as may be prescribed.
- 6) Whose relative is director or is in employment of company as director or KMP.
- 7) If as on date of appointment such person is holding audit of more than 20 companies.

Disqualifications (141).

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- 8) Has been Convicted for fraud and 10 years not elapsed from the date of conviction.
- 9) Is providing prohibited services (section 144)

If any auditor incurs any disqualification after his appointment, auditor shall vacate office and vacancy shall be casual vacancy.

AUDITOR NOT TO RENDER CERTAIN SERVICES (Section 144)

65

An Auditor of the company shall provide the services only as are approved by Board of Directors or Audit Committee as the case may be which shall not include any of the following (whether rendered directly or indirectly to the company or its holding company or its subsidiary company) :-

- a) Accounting and book keeping services.
- b) Internal Audit

AUDITOR NOT TO RENDER CERTAIN SERVICES (Section 144)

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- c) Design and implementation of any informational system
- d) Actuarial services
- e) Investment advisory services
- f) Investment banking services
- g) Rendering of outsourced financial services
- h) Management services
- i) Any other kind of services as may be prescribed.

AUDITOR NOT TO RENDER CERTAIN SERVICES (Section 144)

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Directly or indirectly includes :-

In case of individual :-

Either himself or through his relatives or any other person connected or associated with such individual or through any other entity whosoever, in which such individual has significant influence or control or whose name, trade mark, or brand is used by such individual.

In case of firm:-

Either itself or through any of its partners, through its parent, subsidiary or associate entity in which firm or any partner has significant influence and control or whose name, trade mark, or brand is used by such individual.

Other matters to be included in Auditor's Report

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- Impact (if any) of pending litigations on its financial position in the financial statements.
- Provision for material foreseeable losses (if any) on long term contract including derivative contracts.
- Any delay in transferring amount to investor education and protection fund by company.

RESIGNATION OF AUDITOR (Section 140)

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An Auditor who resign from the company shall file within 30 days of resignation, the statement in prescribed form with Registrar of Companies within 30 days indicating reasons of resignation.

In case of Government company resigning, auditor shall file statement with C&AG.

If auditor does not file such statement he shall be punishable with fine not less than Rs.50,000/- which may extend upto Rs.5,00,000/-

INCREASED ACCOUNTABILITY OF AUDITORS (Section 147)

70

Section 147 provides that where an auditor of a company contravenes any of the provisions relating to **contents of audit report, compliance with auditing standards, rendering prohibited services and signing of audit report** (i.e. Section 143 to 145):

- He shall be punishable with fine which shall not be less than **twenty five thousand rupees** but which may extend to **five lakh rupees**.

INCREASED ACCOUNTABILITY OF AUDITORS (Section 147)

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- Where auditor has contravened any of the aforesaid provisions with **intent to deceive** the company or its **shareholders or creditors or any other person interested or concerned in the company**, 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 **twenty five lakh rupees**, or with both.

INCREASED ACCOUNTABILITY OF AUDITORS (Section 147)

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- Where an auditor has been convicted of an offence as 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 persons **for loss** arising out of **incorrect or misleading statements of particulars** made in his audit report.

INCREASED ACCOUNTABILITY OF AUDITORS (Section 147)

73

Where the auditor of a company is an audit firm and it is proved that the audit partner or partners has or have :

- **Acted in a fraudulent manner or**
- **Abetted or colluded in any fraud by or in relation to or by the company or its directors or officers, the civil liability as provided in the Act or any other law for such an act would be of the audit partner or partners as well as of the firm jointly and severally.**
- Any criminal liability other than fine shall be devolve only on concerned partner or partners who acted in fraudulent manner or abetted or colluded in any fraud.

AUDITOR TO ATTEND AGM

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In the existing Act Auditor is not mandatorily required to attend Annual General Meeting but the new Companies Act, 2013 provides under section 146, every auditor shall attend general meeting by himself or through its authorised representative who is also qualified to be the Auditor unless otherwise exempted by the company.

DIRECTORS

DIRECTORS

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- A company can have maximum no. of directors 15.
- If company wants to appoint more than 15, company can appoint after passing Special Resolution.

Resident Director

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- Every company shall have atleast one director who has stayed in India for not less than 182 days in previous calendar year.

DIRECTORS

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- A person cannot become director in more than 20 companies as against 15 companies under existing Act.

Out of 20, public companies should not be more than 10.

Appointment of Directors

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First Directors:-

- By articles or subscribers to the Memorandum.
- Subscriber of OPC in case of OPC
- Every Director shall be appointed in the General Meeting except provided in the act.

Appointment of Directors

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Qualification :-

- ▣ Person has been allotted DIN
- ▣ A declaration that he is not disqualified under act.
- ▣ Consent to act as Director is given to the company and company has filed such consent with ROC within 30 days.

Rotation of Directors

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- Applicable to all limited companies.
- Unless articles provides retirement of all the directors at every general meeting – not less than 2/3rd of total number of directors shall be eligible to retire by rotation. And
- 1/3rd of such directors shall retire by rotation
- The person selected for retirement by rotation shall be longest period in the office.
- If retirement in the same period for 2 directors then it will be decided by the draw-of-lot.

Rotation of Directors

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- The vacancy for the retiring auditor shall be filled up by appointing any other person or the retiring director himself.
- For the purpose of calculation of total number of directors, number of independent directors shall not be considered.

Appointment of Additional Director

83

- Board can have power in articles to appoint Additional Director.
- The term of Additional Director shall be till the conclusion of next Annual General Meeting or the last date on which AGM have been held whichever is earlier.

Alternate Directors

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- The Board of Directors may appoint alternate directors to any other director.
- If the director is absent, **outside India** for not less than three months.
- The term of alternate director shall not be more than the term of original director.
- The alternate director shall vacate the office if the original director **returns to India**.

Nominee Director

85

- Subject to the article, company may appoint the person as the Director nominated by any institution. In terms of any agreement or by Central Government, State Government, by virtue of its shareholding in the Government company.
- **Other Provisions**
- The **casual vacancy** can be filled by the Board of Directors.

Dis-qualification of Directors

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If he is :-

- ❑ **Unsound mind**
- ❑ **The un-discharged insolvent.**
- ❑ **Has applied for be adjudicated as insolvent and application is pending.**
- ❑ **The order has been passed by Tribunal disqualifying him for appointment as Director.**
- ❑ **If he fails to pay calls on the shareholder and 6 months have lapsed from the last date of payment of call.**
- ❑ **If he is the director of the company which**
- ❑ **has not filed financial statement and annual return for the period of continuous three financial years or**
- ❑ **is failed to repay the deposit obtained by it and the interest thereon.**
- ❑ **fails to redeem any debt on due date and pay interest thereon.**
- ❑ **Fail to pay any dividend declared for one year or more.**

Dis-Qualification of Director (Section 164)

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Additional dis-qualifications:

If he has been

- ❑ **Convicted for related party transaction** at any time during last 5 years. or
- ❑ Convicted for any offence for imprisonment for 7 years or more. or
- ❑ Convicted imprisonment for not less than 6 months or period of 5 years has not lapsed.

DIRECTORS (Section 149)

88

- ❑ A person cannot become director in more than 20 companies as against 15 companies under existing Act.
- ❑ Out of 20, public companies should not be more than 10.
- ❑ Transition period – one year.

DUTIES OF THE DIRECTOR (Section 166)

89

- A director of the Company
- Shall act in **good faith** in order to promote the objects of the company for the **benefit of members, company, employees, the community and for the prevention of environment.**
- Shall exercise his duties with **reasonable care, skill and diligence.**
- Shall not involve in the situation in which he has direct or indirect interest which **conflict with the interest of the company.**
- Shall not achieve or attend to achieve undue gain or advantage.
- Shall not assign his office.
- Penalty : fine be not less than Rs.1,00,000/- or Rs.5,00,000/-.

- If he incurs any disqualification specified in Section 164.
- If fails to attend meetings for consecutive period of 12 months (3 meetings in existing act)

Important :- Director has to vacate his office even if his leave of absence is granted to him or her.

VACATION OF OFFICE OF DIRECTOR (Section 167)

91

- He acts in contravention of provision 164 (entering into contract or arrangement in which he is interested directly or indirectly).
- Fails to disclose the interest in any contract.
- He becomes disqualified by order of the Court.
- He is removed in pursuant to provision of this act.

VACATION OF OFFICE OF DIRECTOR (Section 167)

92

- Penalties:
- Imprisonment **not more than one year** and fine not less than **Rs.1.00 lac** which may extend to **Rs.5.00 lacs** or both.
- Where all the directors have vacated the office then the promoter or the Central Government shall appoint the required number of directors till the time shareholders appoint in general meeting.

Resignation of Directors

93

- ❑ Board shall note all the resignations.
- ❑ Company shall file necessary form with ROC.
- ❑ Directors shall also file the copy of the resignation alongwith the reasons to register within 30 days.
- ❑ Date of resignation shall be the date of the receipt of letter from the Director or any date mentioned therein whichever is later.
- ❑ The Director who resigns shall be liable for the liabilities during his tenure in the company as Director.
- ❑ Where all the Directors resign or vacate then promoter or Central Government shall appoint the required number of directors till shareholders appoints.

Removal of the Directors(section 169)

94

- By ordinary resolution after giving reasonable opportunity.
- Company cannot remove the Director appointed by the Tribunal.
- Special notice is required, opportunity will be given to such Director for hearing.
- Directors will be entitle to give representation.
- The director who was removed will not be appointed by Board as the Director.

Register of Directors (Section 170)

95

- The particulars of KMP's shall also be included in the register.
- The return of appointment of Director shall also include the particulars for the appointment of modification in terms of KMPs.

Director by Small Shareholders

96

- Applicable for Listed company
 - ▣ By notice of 1000 or more small shareholders or 1/10th of total number of such members whichever is less.
 - ▣ Small shareholders means holding not more than Rs.20,000/-.
 - ▣ Company may suo-moto also appoint such director.
 - Such director shall be independent director.
 - Shall not retire by rotation.
 - Tenure not exceeding 3 consecutive years.

Director by Small Shareholders

97

- Shall not hold more than two such Directorship
- Both the companies should not be in competition business.
- After expiry of tenure he will not be associated with company in any manner.

Meeting of the Board OF Directors (Section 173)

98

- First meeting – within 30 days of incorporation
- Thereafter - Atleast 4 meetings in a year and gap between 2 meetings should not be more than 120 days.
- OPC, small company and dormant company shall hold one meeting in each half year – gap between 2 meetings shall not be less than 90 days.
- Length of the notice – 7 days
- Resolution by circulation will be passed by **majority** of Directors
- Resolution passed by circulation shall be noted in next meeting.

Attending meeting by video conference

99

Subject to following conditions :-

- Atleast one meeting in a year in person
- Notice of the meeting shall state the availability of option.
- Directors shall intimate the Chairman of his opinion to participate by video conference atleast **3 days** before meeting
- Following matters shall not be dealt with video conferencing:
 - To approve the financial satement
 - To approve the Board's Report.
 - Approval of prospectus
 - Proposal of amalgamation, merger, demerger, acquisition and takeover.

Powers of the Board (Section 179)

100

- Powers as authorised by MOA & AOA
- Powers to be exercised in board meeting only

Powers of the Board (Section 179)

101

- The powers under of Section 179 (3) are to be exercised in board meeting only.
 - 1) to make calls on shareholders in respect of money unpaid on their shares;
 - 2) to authorize buy-back of securities under section 68;
 - 3) to issue securities, including debentures, whether in or outside India;
 - 4) to borrow monies;
 - 5) to invest the funds of the company;

Restriction of Board Powers (180)

102

Powers to be exercised by Special Resolution:

- ❖ To sell, lease or dispose off whole or substantially whole of undertaking.
- ❖ To invest (otherwise in trusted securities) the amount of compensation received by it as a result of amalgamation or merger.
- ❖ To borrow money exceeding its paid up capital and free reserves (except for banking companies).
- ❖ To remit the account for repayment or debt due from the director.
- ❖ Contribution to bonafide and charitable fund.

Section 180

103

- Action of the board not to be invalidated
- Powers can be delegated to the committees
- The shareholders may restrict any powers of directors.

Disclosure of interest by Director (Section 184)

104

1. General interest as member or director
2. If a director (Directly or indirectly) is any way concerned or interested in a contract or arrangement entered into or be entered into.

* With body corporate in which he/her along with other director holds more than:

- ▣ 2% of shareholding
- ▣ or is a promoter, manager or CEO. OR

▣* With the firm in which he is a partner or owner or member.

Disclosure of interest by Director (Section 184)

105

- ▣ He shall disclose the nature of interest
- ▣ At 1st meeting as director and at every 1st meeting of every financial year.
- ▣ Shall not participate in discussion of such resolution.
- ▣ In case the director become interested after the execution of the agreement then he has to disclose the interest in the first meeting after such interest is created.
- ▣ In case such Director fails to disclose the interest in any such transaction, such contract or arrangement shall be **voidable** at the option of the company.

Disclosure of interest by Director (Section 184)

106

PENALTIES:

Imprisonment upto one year or with fine shall not be less than **Rs.50,000** and may extend to **Rs.1,00,000/-** or with both.

Loan to Directors (Section 185)

107

No company shall directly or indirectly provide any loan (including in nature of book debts) or give guarantee for providing security in connection with any loan to

- Any Director or
- Any other person in which Director is interested.

To any other person means:

- ▣ Any director of lending company or
- ▣ Director of holding company or
- ▣ any partner or relative of such director.
- ▣ Any firm in which he or she or his/ her relative is partner.
- ▣ Any private company in which such director is Director/Member

Loan to Directors (Section 185)

108

- ▣ Any body corporate in which not < 25% of voting power is exceeding by such director or by two or more such director
- ▣ Any body corporate, Board of Directors are accustomed to act with the directions of such director.

Loan to Directors (Section 185)

109

EXCEPTIONS:

1. Company can provide the same to MD OR WTD, if it is a part of condition of service extended by company to its employees.

Or

Pursuant to any scheme approved by Special Resolution.

2. In case of finance companies, loans can be provided not lesser than bank rate.

Rule 10

110

Rule 10 of (Companies Meeting of Board and its powers)
Rules, 2014

Exemptions :-

- Loan given by holding company to wholly owned subsidiary or guarantee given or security provided by holding company in respect of the loan to wholly owned subsidiary company.
 - Any guarantee given or security provided by holding company in respect of loan by any bank or financial institution to its subsidiary company.
- * Provided such loans are utilised by subsidiary company for its principal business.

Loan to Directors (Section 185)

111

□ PANALTIES:

- Company : Rs. 5 lakh to Rs.25 lakh
- Director or any other person to whom loan given or security provided : Imprisonment upto 6 months or fine or both

Loans & Investment by Company

(Section 186)

112

- (1) A Company cannot make investment through not more than 2 layers of investment companies.
- **Exceptions:-**
 - ▣ Acquisition of any other company incorporated outside India if such other company has investment beyond two layers as per the laws of that country.
 - ▣ Investment by subsidiary company in investment subsidiary for the purpose of meeting any requirement under any law in force.
- (2) no company shall directly or indirectly:
 - (a) give loan to any person or other body corporate
 - ❖ (b) provide security in connection with loan and
 - ❖ (c) acquire the securities of any other body corporate.
 - ❖

Loans & Investment by Company

113

- EXCEEDING 60% of capital +free reserve & Premium
OR
100% of free reserve +premium
whichever is higher
- If exceeds the limits S/R is required.

Other conditions:

- No loan / investment without the consent of financial institution if term loan granted by it subsists.
- However, Cosent is not required when amount doesnot exceeds the limits and if no default in repayment.

Loans & Investment by Company

114

- The rate of interest should not be lower than prevailing the yield of 1, 3, 5, and 10 years of Government securities.
- Disclosure of details and purposes of loan, guarantee, investment in financial statement.
- Cannot give any loan/investment if company is in default of paying deposit or interest and said default subsists.
- Company shall maintain register

Loans & Investment by Company

115

Exemptions:

1. Loan by Banking company, insurance company and housing finance companies.
2. Acquisition of securities by
 - a. NBFC
 - b. Company whose principal business is for acquisition
 - c. As right shares

Penalties:

Company	:	Rs. 25000 to Rs. 5lakh
Officer	:	Imprisonment upto 2 years
Fine	:	Rs. 25000 to Rs. 1lakh

RELATED
PARTY
TRANSACTION

Relative

- Section 2 (77) “relative”, with reference to any person, means anyone who is related to another, if—
 - (i) they are members of a Hindu Undivided Family;
 - (ii) they are husband and wife; or
 - (iii) one person is related to the other in such manner as may be prescribed;

Rule 4

118

- | | | | |
|---|----------------------------------|---|--------------------------------|
| 1 | Father (including step father) | 2 | Mother (including step mother) |
| 3 | Son (including step son) | 4 | Son's wife |
| 5 | Daughter | 6 | Daughter's husband |
| 7 | Brother (including step brother) | 8 | Sister (including step sister) |

Related Party

Sec 2 (76) “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;

Related Party



- (vi) any body 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;

Related Party



(*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;

Related Party Transaction (Section 188)

122

Except with approval of Board of Directors, a company shall not enter into any contract or arrangement and the related party with respect to:

- ❑ Sale, Purchase or supply of goods or material and services.
- ❑ Selling or disposing off or buying of property
- ❑ Lease of property
- ❑ Appointment of any agent for sale, purchase of goods, services or property.

Related Party Transaction (Section 188)

123

- Appointment of any related party to any office or place of office of the company or its subsidiary or associate company.
- Contract for underwriting.

Conditions for Related Party Transaction (Rule 15)

124

- 1) Agenda shall disclose:
 - a) Name and relationship.
 - b) Nature, duration and particulars of contract
 - c) Terms and conditions of RPT
 - d) Any advance paid / received
 - e) Manner of determining the pricing
 - f) Any other information.
- 2) Director interested shall not participate in discussion.

Conditions for Related Party Transaction (Rule 15)

125

3) S/R is required if:

- a) Paid up capital Rs.10.00 crores or more.
- b) Sale / purchase / supply exceeds Rs.25% of Annual turnover.
- c) Sales of property > 10% of networth.
- d) Leasing of property > 10% of networth or 10% of Turnover.
- e) Availing services > 10% of networth
- f) Appointment to any office or place of office > Rs.2.50 lacs per month.
- g) Remuneration for underwriting exceeds 1% of networth.

Related Party Transaction (Section 188)

126

Note:

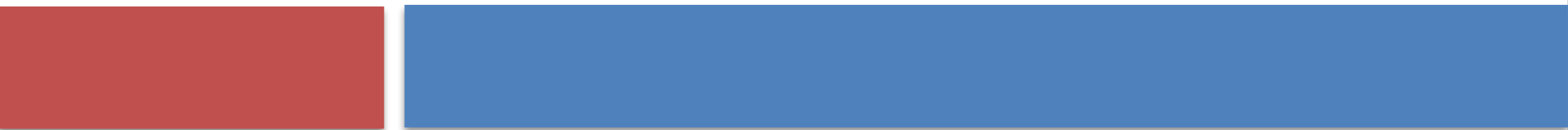
1. The provisions of section 188 will not be applicable to the transaction entered into by the company in its ordinary course of business other than the transaction which are not on Arm's Length Basis (the expression 'Arm's Length' means the transaction between two related parties i.e. contacting as if they were unrelated so that there is no conflict of interest).

RESOLUTION AND AGREEMENT TO BE FILED (SECTION 117)

127

- A copy of every resolution and agreement together with the explanatory statement annexed to the notice shall be filed with the Registrar with 30days.
- The resolution and agreement which are required to be filed are –
 - a) Special resolution;
 - b) Resolution agreed by all members which otherwise have to be passed as special resolution;
 - c) Any resolution of Board of Directors or agreement relating to appointment or terms and conditions of a Managing Director;

- d) Resolutions or agreements which have been agreed to by any class of members but which may otherwise need specific majority.
- e) All resolutions or agreements which effectively bind all members of the class;
- e) Resolutions of Board of Directors for exercising any powers related to disposing of the undertaking and borrowing under clause (a) and(c) of Sub Sec-1 of section 180;
- f) Resolution for wound up voluntarily;
- g) Resolution relating to power of Board under Sub section (3) of Section 179;



ANNUAL GENERAL MEETING (SECTION 96)

130

A	One Person Company	Not required to hold AGM
B	First AGM	Within 9 months from the closure of first F.Y.
C	Next AGM	Within 6 months from the close of the F.Y.
		AGM can only be held between 9a.m.- 6 p.m.
		AGM can be held on holidays but not on national holidays.
D	Penalties for non-compliance	Upto Rs.1,00,000 Or Rs.5000/- per day.

Notice of General Meeting

131

- May be given by electronic mode also.
- To all the Directors.
- Length of notice - 21 clear days (21 days in 1956 Act)
- Shorter notice - with consent of 90% shareholders (100% in 1956 Act)
- For Special business, the nature of concern or interest shall be specified for:
 - a) Director or Manager
 - b) KMPs
 - c) Relative of (a) & (b)

General Meeting on Requisition

132

Eligibility (Section 100)

- ❖ Company having share capital – not less than 1/10th of paid up capital having voting rights.
- ❖ Company not having capital not less than 1/10th of total voting power.

QUORUM OF MEETING (Section 174)

133

❖ In case of Public Company :

- ❖ No. of members not more than 1000 : 5
- ❖ No. of members 1000 to 5000 : 15
- ❖ No. of members more than 5000 : 30

❖ In case of Private Company :

- ❖ 2 members personally present

PROXIES (Section 105)

134

- ❑ Members of Section 8 companies shall not be entitled to appoint proxies unless such person is also a member (Rule 7.7).
- ❑ One person cannot represent proxy for more than 50 members or more than 10% of voting powers

Voting through electronic means (Section 108)

135

- ❑ Applicable to :
 - The listed company or
 - Company having 1000 or more shareholders may provide

DEMAND FOR POLL (Section 103)

136

Eligibility :-

- Company having share capital : not less than $1/10^{\text{th}}$ of total voting power or aggregate value of shares not less than 5,00,000 (50,000 in 1956 act).
- Others : Not less than $1/10^{\text{th}}$ of voting power

- Now provisions for postal ballot are applicable for all companies whether listed or unlisted.

In addition to the existing particulars following more particulars are required to be given in the annual return.

- Principal business activities
- Particulars of holding, subsidiaries and associate companies.
- Details of other securities issued
- Details of Promoters, KMPs and changes in these since last F.Y.
- Details of meetings of members, Board & Committees alongwith attendance details
- Remuneration of Directors & KMPs
- Penalties or punishment imposed on company, directors or officers
- Details of compounding of offences and appeal thereof (if any)
- Details of shares held by Foreign Institution; name, address and percentage

Minutes (Section 118)

139

Minutes are required for :

- Every meeting of shareholders of any class
- Creditors
- Resolution passed by Postal Ballot
- Company should follow secretarial standards
- Distinct minute book shall be maintained for:-
 - General Meeting
 - Creditors meeting
 - Committees meeting

Minutes (Section 118)

140

- ❑ Resolution by postal ballot will also be recorded in Minute Book.
- ❑ Minute book shall be preserved permanently.
- ❑ Shall be kept in custody of CS or authorised Director.
- ❑ Penalty for tampering of minutes, imprisonment of 2 years and fine from Rs.25,000/- to Rs.1,00,000/-

STATUTORY REGISTERS

141

- ❑ Now statutory register are required for all kind of securities.
- ❑ Should be maintained separately for members residing in India and outside India.
- ❑ Record should be maintained at registered office, or
- ❑ At any other place where more than 1/10th of total members reside (with special resolution)

Management & Administration

142

Register of Members	MGT I
Compliance for existing company	Within 6 months
Entry	Within 7 days
Index	Not required, if members <50.

Management & Administration

143

Foreign Registers

Intimation to ROC	30 days
Change to R.O.	30 days
Transmission to Entry to R.O.	30 days
Duplicate Register	At R.O.

Preservation of Records

144

- ❖ Member's Register : Permanently
- ❖ Register of debenture holders / other security holder : 8 years
- ❖ Copies of A/Rs documents, certificate : 8 years
- ❖ Foreign Register : Permanently

Declaration of Beneficial Interest in shares (Section 89)

145

- Members shall declare beneficial interest within 30 days.
- Change in beneficial interest within 30 days.
- The company shall file such particulars with ROC in 30 days.



THANK YOU