

Companies Act 2013 Vs Companies Act 1956

The Companies Act, 2013 has been passed by Lok Sabha as well as Rajya Sabha and the President has given his consent to the same in August 2013.

The Companies Act, 1956 (existing Act) contains 658 sections and XV schedules. The Companies Act 2013 has 464 sections and 7 schedules.

The Act, has lesser sections as the Companies will be governed more through the rules which are yet to be prescribed.

The notes below are prepared based on the provisions of the Act. It may need to be amended/ modified, deleted/ added, as per the Rules as may be prescribed, as well as interpretation as it may emerge over a period of time.

The notes are in respect of provisions which may affect us. The provisions such as winding up, prospectus etc., have not been mentioned in the notes.

| Points of Comparison | Companies Act, 2013 | Companies Act, 1956 |
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| (1) | (2) | (3) |
| FORMATION OF COMPANY | | |
| Minimum No. of persons required to form a company | One Person can form a One Person Company. Minimum 2 for a private company other than OPC. Minimum 7 for a public co. | One Person can't form a company. Minimum 2 for a private company. Minimum 7 for a public co. |
| Types of companies that | 15 Types of Companies. | 10 Types as under: |

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| can be formed | <p>In addition to the 10 types that could be formed under the 1956 Act as per Col. (3), following 5 new types of Cos. can be formed under 2013 Act:</p> <ul style="list-style-type: none"> • One Person company (OPC) limited by shares • OPC limited by guarantee & having share capital • OPC limited by guarantee having no share capital • OPC Unlimited Company having share capital | <ul style="list-style-type: none"> • Public company limited by shares • Public company limited by guarantee & having share capital • Public company limited by guarantee & having share capital & having no share capital • Public Unlimited company having share capital • Private Company limited by shares |
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| Maximum number of members allowed in private company | 200 (for a private company other than OPC) | 50 |
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MEMORANDUM OF ASSOCIATION (MOA)

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| Objects clause of Memorandum | <p>Objects of the Company to be classified and stated in MOA as : (i) the objects for which the company is proposed to be incorporated and (ii) any matter considered necessary in furtherance thereof.</p> | <p>Objects of the Company should be classified and stated in MOA as : (i) the main objects of the company; (ii) Objects incidental or ancillary to the attainment of the main objects and (iii) other objects of the company.</p> |
| Availability of name | <p>Section 4(4) and 4(5)(i) of the 2013 Act incorporate the procedural aspects of application for availability of name of proposed company or proposed new name for existing company.</p> | <p>Procedural aspects of application for availability of name find no place in the 1956 Act.</p> |



ARTICLES OF ASSOCIATION

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| Entrenchment provisions in Articles | Articles may contain such provisions | No enabling provisions in 1956 Act for articles to contain entrenchment provisions. |
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COMMENCEMENT OF BUSINESS

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| Commencement of Business | <p>A company having a share capital (whether public or private) shall not commence any business or exercise any borrowing powers unless-</p> <p>(a) a declaration is filed by a director or with the Registrar that every subscriber to the memorandum has paid the value of the shares agreed to be taken by him and the paid up capital of the company is not less than Rs.5,00,000 in case of a public company and not less than Rs.1,00,000 in case of a private company on the date of making this declaration; and</p> <p>(b)The company has filed with the Registrar a verification of its registered office in such manner as may be prescribed; [See also section 12(2) of the 2013 Act]</p> <p>While section 149 of the 1956 Act applied only to public companies having share capital, section 11 of the 2013 Act, unlike the 1956 Act, empowers ROC to initiate action for the removal of the name</p> | <p>A company having a share capital cannot commence business or exercise borrowing powers unless it has complied with formalities as under:-</p> <p>(A) where the company has issued a prospectus</p> <p>(i) the minimum number of shares which have to be paid for in cash have been allotted.</p> <p>(ii) Every director has paid on his shares an amount equal to what is payable on shares offered to public on application and allotment.</p> <p>(iii)No money is or may become refundable due to failure to apply for or obtain permission for listing from any recognized stock exchange/(s); and</p> <p>(iv) A statutory declaration by the secretary or one of the directors that the above requirements have been complied with is filed with ROC.</p> <p>(B) Where the company has not issued a prospectus</p> <p>(i) It has filed with ROC a statement in lieu of prospectus at least 3 days before</p> |
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| | <p>of the company from the register under Chapter XVIII if the following conditions are satisfied:</p> <ul style="list-style-type: none"> • no declaration has been filed with the Registrar as in Point (a) above within 180 days of the date of incorporation of the company and • the Registrar has reasonable cause to believe that the company is not carrying on any business or operations. | <p>allotment; and (ii) The conditions at (ii) and (iv) in (A) above are complied with.</p> |
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REGISTERED OFFICE

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| <p>From which date, company must have a registered office?</p> | <p>On and from the 15th day of its incorporation.</p> | <p>From the earlier of the following two dates:</p> <ul style="list-style-type: none"> ▪ The day on which it begins to carry on business, ▪ The thirtieth day after the date of its incorporation. |
| <p>Consequences of not furnishing verification of registered office / notice of change in registered office</p> | <ul style="list-style-type: none"> ▪ The company and every officer who is in default shall be liable to a penalty of Rs.1000 for every day during which the default continues but not exceeding Rs.1,00,000 ▪ A company having share capital shall not be entitled to commence any business or exercise any borrowing power until it is furnished. | |
| <p>Notice of change of registered office address to ROC-Time Limit</p> | <p>To be given to ROC within <u>15 days</u> of such change.</p> | <p>To be given to ROC within <u>30 days</u> of such change.</p> |
| <p>Whether inclusion in the annual return of a company of a statement as to the address of its</p> | <p>The 2013 Act is silent on this issue.</p> | <p>No. [See Section 147(3) of the 1956 Act].</p> |

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| <p>registered office is notice of situation of registered office / notice of change of registered office?</p> | | |
| <p>Alteration of the clause relating to the place of the registered office from one State to another</p> | <ul style="list-style-type: none"> ▪ The alteration procedure under the 2013 Act is lot more simplified and also time-bound. The Central Government shall dispose of the application within a period of 60 days. ▪ No requirement of the 2013 Act that shifting be for specified purposes. Provisions of section 17(1) of the 1956 Act have been omitted by the 2013 Act. ▪ No time limit prescribed for filing special resolution and certified copy of Central Government's order confirming alteration under the 2013 Act. Only thing is that till documents are filed, alteration will not take effect. | <ul style="list-style-type: none"> ▪ There was no time-limit under the 1956 Act within which Central Government was bound to dispose of the applications for shifting registered office from one state to another. ▪ Shifting registered office from one state to another should be for one of the specified purposes [See section 17(1) of the 1956 Act] ▪ Filing of a certified copy of the order of Central Government confirming the alteration along with a copy of memorandum as altered within 3 months from the date of the order with the Registrar of the State from which office is shifted and the Registrar of the State to which the office is to be shifted [See Sec. 18(1)(b) & Sec.18(3) of the 1956 Act]. Further, if the documents required to be filed with the Registrar are not filed within the period of 3 months as aforesaid, the alteration and the order of the Central Government and all proceedings connected therewith, shall, at the expiry of such period, would become void and inoperative. However, on sufficient cause shown, |



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| | | order could be revived. |
| Where a company has changed its name or names during the last two years | Where a company has changed its name or names during the last two years it shall paint affix or print, as the case may be (on the outside of every office or place of business, business letters, bill heads, letter papers, hundis, promotes, etc.) along with its name, the former name or names so changed during the last two years. | No such requirement was there in the 1956 Act. |

ALTERATION OF NAME CLAUSE

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| Voluntary rectification of name by a company where company's name identical with or too nearly resembles the registered trade mark | Not allowed | Not allowed |
| Where name of the company too nearly resembles or is identical with Registered trade mark – Time-limit for Central Government to issue direction to company for rectification of name | No time-limit in the 2013 Act for issue of direction by the Central Govt. to the company to rectify its name. | Under the 1956 Act there time-limit in the 2013 Act for issue of direction by the Central Govt. the company to rectify its name by passing an ordinary resolution. The time limit was within 12 months of first registration / registration by new name. |
| The time limit for making application by proprietor of registered trade mark to the Central Government seeking a direction to the company for rectification of name | Three years of incorporation or registration of the company with name resembling / identical to registered trade mark when this fact of such registration came to the notice of the | Five years from the date when this fact of registration of company with name identical to his registered trade mark came to the notice of the proprietor of |

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| of the company where the name of the company resembles his trade-mark | proprietor of the trade mark- this is irrelevant for computing the limitation period of 3 years. | registered trade mark. |
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ALTERATION OF OBJECTS CLAUSE

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| Purposes for which objects clause may be altered | <ul style="list-style-type: none"> o No requirement in the 2013 Act that alteration of objects clause should be for specified purposes. Provisions of section 17(1) of the 1956 Act have been omitted by the 2013 Act. | <ul style="list-style-type: none"> o Alteration of objects clause should be for one of the specified purposes [See section 17(1) of the 1956 Act]. |
| Where company has unutilized proceeds of public issue | <ul style="list-style-type: none"> o New restrictions on alteration of objects clause of memorandum – Where company has any unutilized amount from proceeds of public issue where a company which has raised money from public through prospectus and still has any unutilized amount out of the money so raised, shall not change its objects is passed by the company and – <ul style="list-style-type: none"> (a) The details, as may be prescribed, of the notice in respect of such resolution to shareholders, shall also be published in the newspapers (one English and one vernacular) in the city where the registered office of the company is situated and shall also be placed on the website of the company, if any, indicating clearly the justification for such change; (b) The dissenting shareholders be given an opportunity to exit by the promoters and shareholders having | <ul style="list-style-type: none"> o No restrictions on alteration of objects clause where company has any unutilized proceeds of public issue. |



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| | control in accordance with regulations specified by SEBI. | |
| Registration of objects clause alteration by ROC | To be registered within 30 days from date of filing special resolution altering the objects clause. | No time-limit within which ROC to register the alteration. |

ALTERATION OF ARTICLES

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| Conversion of Public Company into Private Company | Approval of Tribunal required. | No alteration which has the effect of converting public company into a private company, shall have effect unless such alteration has been approved by the Central Government (Power delegated to ROC). |
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SUBSIDIARY CO. NOT TO HOLD SHARES IN HOLDING CO.

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| Bar on subsidiary becoming member of holding company | The bar in section 18 of the 2013 Act applies only to companies and not to bodies corporate other than companies as the wording in section 18(1) is "No company shall, either by itself or through its nominees, hold any shares in its holding company" as opposed to section 42(1) of the 1956 Act which stated "a body corporate cannot be a member of a company which is its holding company" | Section 42 of the 1956 Act barred any body corporate from being a member of its holding company. |
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SERVICE OF DOCUMENTS

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| Service of documents by electronic mode | Electronics mode for sending documents to the company recognized by the 2013 Act. | Service by electronic mode not recognized by the 1956 Act. |
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| | The 2013 Act has also recognized "such electronic or other mode as may be prescribed" for service of documents to ROC. | |
| Deemed service of notice of meeting on expiry of 48 hours | No provision of deemed service of notice under the 2013 Act. | Deemed service of notice of meeting on expiry of 48 hours when notice of meeting is sent by post. |
| Service of documents on member / ROC by speed post / Courier | Recognised mode of service 'Courier' defined. | Not a recognized mode of service. |
| Right of member to demand sending of documents to him by courier / speed post etc. | By paying fees fixed by general meeting, he can demand service by any mode – even if it is non-prescribed, e.g. Courier / Speed post etc. | The member could only demand in advance sending of documents to him by a certificate of posting or by registered post with or without acknowledgement due by pre-paying company's expenses for these modes of services. |
| Service of documents on joint holders of shares / on persons entitled to share on death / insolvency of member | No provision in this regard in the 2013 Act. | Mode of service clearly spelt out in section 53 of the 1956 Act. |

SHARE CAPITAL

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| Record of depository | Record of the depository is the prima facie evidence of the interest of the beneficial owner of shares held in | No provision in this regard. |
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| | depository form. | |
| When dividend of preference shares shall be deemed to be due | The 2013 Act omits interpretative provision of Explanation to section 87 of the 1956 Act. | Explanation to section 87 of the 1956 Act clarifies when dividend shall be deemed to be due on preference shares in respect of any period. |
| Variation of shareholders' rights – where variation by one class of shareholders affects the rights of any other class of shareholders | Section 48 of the 2013 Act clarifies that if variation by one class of shareholders affects the rights of any other class of shareholders, the consent of at least 75% of such other class of shareholders shall also be obtained and provisions of section 48 of the 2013 Act shall apply to such variation [Provisio to section 48(1) of the 2013 Act]. | The 1956 Act contained no provisions in this regard. |
| Application of premium received on issue of shares | Section 52(3) of the 2013 Act intends to eliminate conflict with Accounting Standards by providing that such class of companies as may be prescribed whose financial statements comply with Accounting Standards prescribed for such class of companies, cannot utilize securities premium account for writing off preliminary expenses or for writing off the expenses or the commission paid or discount allowed on the issue of preference shares or | Section 78(2) of the 1956 Act permitted all companies to utilize securities premium account inter alia for writing off preliminary expenses of or the commission paid or discount allowed on any issue of shares or debentures of the company for providing premium payable on redemption of preference shares or debentures. |

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| | debentures of the company for providing premium payable on redemption of preference shares or debentures. | |
| Prohibition on issue of shares at discount | The 2013 Act has prohibited issue of shares (other than sweat equity shares) at a discount. Under the 2013 Act, only sweat equity shares can be issued at a discount. | Section 79 of the 1956 Act permitted issue of shares at a discount subject to certain conditions. |
| Filing fees relief (ROC filing fees) and stamp duty relief for reissue of redeemed preference shares | No such relief allowed | Allowed under section 80(4) of the 1956 Act. |
| Transfer and transmission of securities | Section 56(1) of the 2013 Act provides for transfer by company of such interest by execution of instrument of transfer and delivery of the same to company within 60 days from the date of execution for getting the transfer of interest, registered in transferee's favour. | No procedure or mechanism for transfer of interest of a member in a company having no share capital. Such interest is nevertheless transferable under the Transfer of Property Act, 1882 (general law of transfer of property). |
| Applicability of rights issue provisions | Section 62 of the 2013 Act applies to all companies public as well as private | Section 81 of the 1956 Act applied only to public companies |
| Period for which rights fares offer should be open | Minimum 15 days maximum 30 days | Minimum 15 days no maximum 30 days |
| Despatch of notice of | Expressly allowed by 2013 | No provisions like this in the |

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| <p>rights offer through electronic mode</p> | <p>Act</p> | <p>1956 Act.</p> |
| <p>Offer of further shares to others (other than existing equity shareholders)</p> | <p>Special resolution required. Alternative of ordinary resolution and Central Govt. approval omitted by 2013 Act.</p> | <p>Special resolution required. Alternatively ordinary resolution and Central Government approval.</p> |
| <p>Issue of Bonus shares</p> | <ul style="list-style-type: none"> • No issue of bonus shares shall be made by capitalizing reserves created by the revaluation of assets. • This bar on issuing bonus shares out of revaluation reserves applies to all companies whether listed or unlisted. • Section 63 of the 2013 Act overcomes Supreme Court ruling in Bhagwati Developers | <ul style="list-style-type: none"> • The 1956 Act specifically permits utilization of reserve arising from revaluation of assets for purpose of issuing fully paid up bonus shares. • A company can issue bonus shares by capitalisation of revaluation reserve if the Articles of Association of the company so permits [Supreme Court's decision in Bhagwati Developers v. Peerless General Finance & Investment Co.[2005]62 SCL 574]. • In the above case, Supreme Court was concerned with an unlisted company. In case of listed companies, the SEBI (CDR) Regulations, 2009 prohibits issue of bonus shares by capitalization of revaluation reserves. The SEBI (OCDR) Regulations is not applicable to unlisted companies. • Thus, under the 1956 Act, unlisted company could use revaluation reserve for issuing bonus shares. |



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| Notice of redemption of redeemable preference share to ROC. | If company redeems any redeemable preference shares, notice has to be given to ROC with an altered memorandum. | Notice not required to be given to ROC. |
| Applicability of reduction of capital provisions to buyback | The provisions for reduction of capital shall not apply to buy-back of its own securities by a company. The intention seems to be that if buyback is made in strict compliance with section 68 of the 2013 Act provisions of section 66 of the 2013 Act regarding reduction of capital are not applicable to such buy-back. If buy back does not comply with section 68 of the 2013 Act, it is a reduction of capital requiring Tribunal's Confirmation [Section 66(6) of the 2013 Act]. | No provisions in this regard. |

REGISTERS

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| Duplicate of foreign register | No requirement to maintain duplicate of the foreign register in India. | Section 158 of the 1956 Act required a duplicate of the foreign register to be maintained in India. |
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ANNUAL RETURN

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| Whether full annual return / only changes to be filed every year | Full annual return to be filed every year [No provisions like section 159(1) of the 1956 Act of filing full annual return once in 5 years and changes in between] - All companies | The 1956 Act [See section 159(1) of the 1956 Act] provided that if any of the five immediately preceding annual returns has given the full particulars required as to past and present members |
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| | | and the shares held and transferred by them, the return in question may contain only changes in those particulars since the date of the AGM with reference to which the annual return in question is prepared. |
| Certification of annual return by CS in practice | The 2013 Act extends this requirement to unlisted companies having such paid-up capital and turnover as may be prescribed. - all Pvt. Companies may be covered | Only listed companies required to get annual return certified by a 'secretary in whole-time practice'. |
| Extract of annual return in board's report | Extract of annual return in prescribed form to be given as part of Board's report. - All companies | Not required. |
| Punishment for company secretary certifying annual return | Where a Company Secretary in practice certifies the annual return otherwise than in conformity with the requirements with the requirements of this clause or the rules made there under, such Company Secretary shall be punishable with fine which shall not be less than Rs.50,000 but which may extend to Rs.5,00,000. - All companies | No penal provisions in the 1956 Act in this regard. |
| Filing of changes in promoter's stake by listed | Every listed company shall file a return in the prescribed form | Not required under the 1956 Act. |



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| companies | with the ROC with respect to any change in the shareholding position of the promoters and top ten shareholders of such company. Return to be filed within 15 days of such change. - PL / GPAEL. | |
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PLACE OF KEEPING REGISTERS, ETC.

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| Place of keeping registers, copies of annual returns etc. | The 2013 Act permits a company to keep these registers or copies of returns at any other place (i.e., place other than the registered office) in India (not necessarily within the city, town or village in which the registered office is situated) if following conditions above are fulfilled: (i) more than 10% of the total members entered in the register of members reside at that place; (ii) the keeping of registers or copies at that place is approved by a special resolution passed at a general meeting of the company; and (iii) the Registrar has been given a copy of the proposed special resolution in advance. | Section 163 of the 1956 Act permitted a company to keep these registers, copies of annual returns etc. at any other place (i.e., place other than the registered office) within the city, town or village in which the registered office is situated if the same is (i) approved by a special resolution passed at a general meeting of the company and (ii) the Registrar has been given a copy of the proposed special resolution in advance. |
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INSPECTION OF REGISTERS, ETC.

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| Inspection of registers, copies of returns etc. | The 2013 Act does not empower the company to restrict the right to inspect | Section 163 of the 1956 Act provided that the right of inspection of registers of |
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| | registers, copies of indices, returns, etc. – PL/GPAEL | members, debenture holders etc. shall be subject to such reasonable restrictions, as the company may impose, so that not less than 2 hours in each day are allowed for inspection. |
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ANNUAL GENERAL MEETING

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| Day, venue and time for AGMs | <ul style="list-style-type: none"> • Section 96(2) of the 2013 Act provides that every annual general meeting shall be called during business hours, that is, between 9 a.m. and 6 p.m. on any day that is not a National Holiday. – PL/GPAEL • Thus, section 96(2) clarifies what is meant by 'business hours' – i.e., between 9 a.m. and 6 p.m. The term 'business hours' was not defined in the 1956 Act. | Section 166(2) of the 1956 Act required that every AGM should be called a time during business hours, on a day that is not a Public Holiday. [Section 2(38) of the 1956 Act defined public holiday]. |
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NOTICE FOR MEETING

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| Giving notice for general meetings in electronic mode | Section 101 of the 2013 Act permits giving notice of the general meetings of the company through electronic mode. – PL/GPAEL | No express provision permitting notice to be given in electronic mode. |
| Consent of members to shorter notice for general meetings | Consent for shorter notice is required from not less than 95% of the members entitled to vote at such meeting (irrespective of whether it is | Consent for shorter notice is (i.e. less than 21 clear days notice) was required to be given by all the members entitled to vote thereat (for |

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| | AGM or EGM) - All companies | AGM) and by not less than 95% of the members entitled to vote at such meeting (for meetings other than AGM). |
| Mode of consent of members to shorter notice for general meetings | The 2013 Act requires that consent for shorter notice should be given in writing or by electronic mode. - All companies | The 1956 Act did not specify the mode in which consent for shorter notice for the meeting (i.e. less than 21 clear days notice) should be accorded. |
| Definition of 'material facts' in the context of Explanatory Statement annexed to Notice | Section 102 of the 2013 Act clarifies that material facts are those that may enable members to understand the meaning, scope and implications of the items of business and to take decision thereon. - All companies | Section 173 of the 1956 Act did not clarify what facts are 'material facts'. |
| Liability to compensate the company for Non-disclosure or insufficient in Explanatory Statement annexed to Notice | Where as a result of the non-disclosure or insufficient disclosure in any Explanatory Statement, being made by a director, manager, if any, or other key managerial personnel, any benefit may accrue to such director, manager or other key managerial personnel or his relative. This director, manager or other key managerial personnel, as the case may be, shall hold such benefit in trust for the company, and shall be liable | No provisions in this regard. |



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| | to compensate the company to the extent of the benefit received by him. - All companies | |
| When disclosure of interest necessary in Explanatory Statement | Section 102 of the 2013 Act provides that where any item of <u>special business relates to or affects any other company, the extent of shareholding</u> interest in that other company of every director, manager, if any, and of every other key managerial personnel of the first mentioned company shall be disclosed in the Explanatory Statement if the extent of such shareholding is 2% or more of the paid-up share capital of that other company. - All companies | Disclosure of interest in the explanatory statement was required if the extent of such shareholding interest 20% or more of the paid-up capital of that other company. |

QUORUM FOR MEETINGS

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| Quorum for general meetings for public companies | Section 102 of the 2013 Act fixes quorum for public companies based on the number of members of the company as under: <ul style="list-style-type: none">• 5 members personally present if the number of members as on date of meeting is not more than 1000.• 15 members personally present if the number of members as on date of meeting is more than 1000 but not more than 5,000.• 30 members personally | Quorum requirements for public companies for general meetings are 5 members personally present unless the articles stipulate a larger number. |
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| | <p>present if the number of members as on date of meeting is more than 5,000. - PL / GPAEL</p> <p>Thus, quorum requirements for a public company having more than 1000 members stand increased from 5 members personally present to 15/30 members personally present.</p> | |
| Quorum not present within half-an-hour | <p>These provisions apply under 2013 Act regardless of what articles of the company provide. It is further provided that in case of an adjournment or of a change of day, time or place of adjourned meeting (which was adjourned inquorate), the company shall give not less than 3 days' notice to the members either individually or by press announcement.</p> | <p>Section 174(4)/(5) of the 1956 Act provided as to what would happen if quorum not present within half-an-hour. These provisions applied unless articles applied provided otherwise.</p> |

PROXY

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| How many members can a proxy act for? | <p>Section 105 of the 2013 Act provides that a person appointed as proxy shall act on behalf of such number of members not exceeding 50 and <u>such number of shares as may be prescribed.</u>- PL/GPAEL</p> | <p>No such restriction in 1956 Act.</p> |
| A class or classes of companies whose | <p>Section 105 of the 2013 Act also provides that the</p> | <p>No such restriction in 1956</p> |

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| <p>members shall not be entitled to appoint proxies</p> | <p>Central Govt. may prescribe a class or classes of companies whose members shall not be entitled to appoint proxies.</p> | <p>Act.</p> |
| <p>Restrictions on voting rights</p> | <p>Under the 2013 Act, the restriction stated under the 1956 Act shall apply to public companies as well as private companies.-All companies</p> | <p>The restriction that a company shall not prohibit any member from exercising his voting right on any other ground other than non-payment of calls or lien on shares, applied only to public companies under section 182 of the 1956 Act.</p> |

POLL

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| <p>Persons entitled to demand Poll in case of a public company having share capital</p> | <p>The members present in person or by proxy and having not less than 10% of the total voting power or holding shares on which an aggregate sum of not less than Rs.5,00,000 or such higher amount as prescribed has been paid up. - PL/GPAEL</p> | <p>Any member or members present in person or by proxy and holding shares in the company which confer 10% or more voting power on the resolution or on which Rs.50,000 or more in the aggregate has been paid-up.</p> |
| <p>Persons entitled to demand Poll in case of a private company having share capital</p> | <p>The members present in person or by proxy and having not less than 10% of the total voting power or holding shares on which an aggregate sum of not less than Rs.5,00,000 or such higher amount as prescribed has been paid up. - All Pvt. Companies</p> | <ul style="list-style-type: none"> • If 7 or less members having voting power personally present, then one member having right to vote on the resolution present in person or by proxy may demand a poll. • If more than 7 such members present – Two such members present in person or by proxy may demand poll. |

POSTAL BALLOT

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| Postal Ballot | Applicable to all companies - PL/GPAEL | Applicable only to listed companies. |
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RESOLUTION

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| Votes cast electronically, whether to be counted | To be counted for determining whether ordinary or special resolution has been passed. - PL/GPAEL | The 1956 Act did not expressly allow electronic voting. |
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SPECIAL NOTICE

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| Special Notice of a resolution | Where any resolution requires special notice, notice of the intention to move such resolution shall be given to the company by such number of member holding not less than 1% of total voting power or holding shares on which such aggregate sum not exceeding Rs.5,00,000, as may be prescribed, has been paid up. - PL/GPAEL | No requirements that notice should be given by any specified number of members. |
| Special Notice of a resolution - Length of notice | No stipulation on how many days before meeting special notice is to be given. - PL/GPAEL | 14 clear days notice before the day of meeting. |

SECRETARIAL STANDARDS

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| Secretarial Standards | Every company shall observe such secretarial standards with respect to general and Board meetings as may be specified by the Institute of Company Secretaries of India and approved as such by the Central Government.- | The 1956 Act did not recognize secretarial standards Secretarial standards were not mandatory under the 1956 Act. |
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| | All companies | |
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| MINUTES | | |
| Specific penalty / punishment for tampering of minutes | Section 118(12) of the 2013 Act provides that if a person is found guilty of tampering with the minutes of the proceedings of meeting he shall be punishable with imprisonment for a term which may extend to two years and with fine which shall not be less than Rs.25,000 but which may extend to Rs.1,00,000. - All companies | No specific punishment for tampering of minutes |
| OTHERS | | |
| Statement circulated at general meetings by members on their requisition | Allowed atalso. 1000 words limitation for statement omitted by the 2013 Act. - PL/GPAEL | Allowed at GMs – Statement not to exceed 1000 words. |
| Whether dividend declaration / payment barred if company is in default of repayment of deposits? | Yes. A company which fails to comply with section 73 and 74 of the 2013 Act (repayment of deposits accepted before commencement of the Act) shall not, so long as such failure continues, declare any dividend on its equity shares. . - PL/GPAEL | No such bar in the 1956 Act. |
| Dividend only from free reserves | Third proviso to section 123(1) of the 2013 Act provides that no dividend shall be declared or paid by a company from its reserves other than free reserves. - | No express provisions in this regard in the 1956 Act. |

| | All companies | |
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| Whether past losses required to be set off before declaring dividend | Not required. No express provisions along the lines of clause (b) of the first proviso to section 205(1) to the 1956 Act. . - PL/GPAEL | Yes. Clause (b) of the first proviso to section 205(1) to the 1956 Act requires that company must provide, in respect of each previous financial year (after providing for depreciation) or the amount of depreciation provided, whichever is lower. |
| Power of Central Government to permit in public interest declaration of dividend without providing depreciation | No such power conferred on the Central Government by the 2013 Act. | The Central Government may, in the public interest allow any company to pay dividend for any financial year out of the profits for that year out of any previous financial year or years without providing for depreciation. [See clause (b) of the first proviso to section 205(1) of the 1956 Act] |
| Whether transfer to reserves compulsory? | No. A company may, before the declaration of any dividend in any financial year, transfer of its profits for that financial year as it may consider appropriate to the reserves of the company. - All companies | Yes. Where the company proposes to declare dividend for any financial year (at a rate exceeding 10% of the paid-up capital) out of the profits for that year, the company has to transfer to profits (not exceeding 10%) as prescribed in the Companies (Transfer of Profit to Reserves) Rules 1975. |
| Payment of dividend through electronic mode | Expressly allowed. - PL/GPAEL | No express provisions allowing this. |



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| to registered shareholder | | |
| Unpaid Dividend Account | <ul style="list-style-type: none">• Section 124(6) of the 2013 Act goes a step further than section 205C of the 1956 Act and provides that all shares in respect of which unpaid or unclaimed dividend has been transferred to the Investor Education and Protection Fund shall also be transferred by the company in the name of Investor Education and Protection Fund along with a statement containing such details as may be prescribed.• Any claimant of shares transfer of shares from Investor Education and Protection Fund in accordance with submission of such documents as may be prescribed. - PL/GPAEL | Section 205C of the 1956 Act provides that amounts in the unpaid accounts of companies which have remained unclaimed and unpaid for a period of seven years from the date they became due for payment shall be by a company to the Investor Education and Protection Fund. |
| Right of Investor to make a claim to Investor Education and Protection Fund | <ul style="list-style-type: none">• Section 125 of the 2013 Act provides that claim of an investor over a dividend or benefit from a security not claimed for more than 7 years would not be extinguished.• In other words, any person claiming to be entitled to such dividend or money may apply to the authority administering the fund for payment. - | Investor / Depositor / shareholder / debenture holder cannot claim the amount from the Fund / the Company after the expiry of the 7 years period as above. |

PL/GPAEL

CORRESPONDING TO SCHEDULE XIV OF 1956 ACT – PL/GPAEL

The following are the differences between Schedule II of 2013 Act and Schedule XIV of 1956 Act:

| Sr.No. | Schedule II of the 2013 Act | Schedule XIV of the 1956 Act |
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| 1 | Schedule II contains only useful lives of tangible assets and does not prescribe depreciation rates. | Schedule XIV contained rates of depreciation of tangible assets. |

ACCOUNTS

| Points of comparison | Companies Act, 2013 | Companies Act, 1956 |
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| (1) | (2) | (3) |
| Books of account in electronic mode | Company may keep such books of accounts or other relevant papers in electronic mode in such manner as may be prescribed.- All companies | No provisions in the 1956 Act enabling company to keep books of accounts in electronic mode. |
| Consolidated financial statements | Mandatory if company has one or more subsidiaries or associates or joint ventures.- PL/GPAEL/SUN TAN | Not mandatory. No provisions in this regard in the 1956 Act. |
| Requirements to attach subsidiary company's accounts etc. holding company's accounts | Requirements omitted. - CBC | If a company was a holding company, it was required to attach to its balance sheet a statement showing holding company's interest in subsidiary [See section 212(5) of the 1956 Act]. |
| Compulsory placing of accounts on a company's website | <ul style="list-style-type: none"> A listed company shall also place its financial statements including consolidated financial statements and all | No required by the 1956 Act. |

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| | <p>others documents required to be attached or annexed thereto, on its website, which is maintained by or on behalf of the company. –</p> <p>PL/GPAEL</p> <ul style="list-style-type: none"> • Every company having a subsidiary or subsidiaries shall, - <ul style="list-style-type: none"> (a) Place separate audited accounts in respect of each of its subsidiary on its website, if any; (b) Provide a copy of separate audited financial statements in respect of each of its subsidiary, to any shareholder of the company who asks for it. | |
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REPORT OF BOARD OF DIRECTORS – All Companies

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| <p>Disclosures in Board's Report</p> | <p>More disclosures required by the 2013 Act. Additional / New disclosures required in report of the Board by the 2013 Act are as under –</p> <ul style="list-style-type: none"> • Extract of annual return, • Number of meetings of the board. • A statement on declaration given by independent directors [See Section 149(6) of the 2013 Act]. • Company's policy on directors' appointment and remuneration including criteria for determining qualifications, positive attributes, | <p>Much disclosures required by the 1956 act in the Board of Directors Report.</p> |
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| | <p>independence of a director and other matters [See section 178(1) / 178(3) of the 2013 Act.</p> <ul style="list-style-type: none">• Explanations or comments by the Board on every qualification, reservation or adverse remark or disclaimer made by the Company Secretary in practice in his secretarial audit report.• Particulars of loans, guarantees or investments [See section 186 of the 2013 Act].• Particulars of contracts or arrangements [See section 188(1) of the 2013 Act].• A statement indicating development and implementation of a risk management policy for the company including identification therein of elements of risk, if any, which in the opinion of the Board may threaten the existence of the company.• Details about the policy developed and implemented by the company on Corporate Social Responsibility initiatives taken during the year.• In the case of a listed company and every other public company having such paid-up capital as may be prescribed, a statement in which formal evaluation has been | |
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| | <p>made by the Board of its own performance and that of its committees and individual directors.</p> <ul style="list-style-type: none">• Such other matters as may be prescribed. | |
| Directors' Responsibility Statement (DRS) in Board's report | <p>The Directors' Responsibility Statement in the report of the Board of Directors shall contain the following additional declarations-</p> <p>(a) 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 financials controls are adequate and were operating effectively. ["Internal Financial Controls" means the policies and procedures adopted by the company for ensuring the orderly and efficient conduct of its business, including adherence to company's policies, the safeguarding of its assets, the prevention and detection of frauds and errors, the accuracy and completeness of the accounting records and the timely preparation of reliable financial information].</p> <p>(b) The directors had devised proper systems to ensure compliance with the provisions of this Act and rules made</p> | <p>Declarations regarding internal financial controls and legal compliance system not required in DRS.</p> |



VASHISTA & ASSOCIATES
ADVOCATES & SOLICITORS

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| | thereunder and that such systems were adequate and operating effectively. All companies. | |
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CORPORATE SOCIAL RESPONSIBILITY

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| Corporate Responsibility (CSR) | Social In every financial year, CSR spends of at least 2% of the average net profits the company made during the 3 immediately preceding financial year is mandatory for every company satisfying any of the following criteria: <ul style="list-style-type: none">• Having net worth of Rs.500 crores or more, or• Having turnover of Rs.1,000 crores or more, or• Having net profit of Rs.5 crores or more, or - CBC | No provisions regarding CSR in the 1956 Act. |
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INTERNAL AUDIT- PL/GPAEL & CBC may

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| Compulsory internal audit | Section 138 of the 2013 Act provides as under: <ul style="list-style-type: none">• Such class or description of companies as may be prescribed shall be required to appoint an internal auditor to conduct internal audit of books of account of the company.• Internal auditor shall be a Chartered Accountant or a Cost Accountant or such other professional as may be decided by the Board.• The Central Government may make rules to prescribe the manner in which internal audit shall be conducted and reported. | No provisions in the 1956 Act as regards mandatory internal audit. |
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APPOINTMENT OF AUDITORS

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| Appointment of Auditors of Companies other than Govt. Companies at AGM for 5 years tenure – (All companies) | <ul style="list-style-type: none"> • Appointment of auditors for 5 years tenure subject to ratification at every annual general meeting. • Where at any annual general meeting, no auditor is appointed, the existing auditor shall continue to be the auditor of the company. | <ul style="list-style-type: none"> • No provisions in the 1956 Act for 5 years tenure for auditors. • No provisions in the 1956 Act for existing auditor to continue in default of appointment / reappointment at AGM. |
| Special resolution for appointment of auditors | Requirement of special resolution for appointment of auditor dropped [See section 224A of the 1956 Act omitted]. – PL | Section 224A of the 1956 Act: Auditor not to be appointed except with the approval of the company by special resolution in certain cases. |
| Compulsory rotation of auditors | Applicable to listed companies & classes of companies as <u>may be prescribed</u> . Individual auditor to be rotated after 1 term of 5 years Audit Firm to be rotated after 2 terms of 5 years. – PL/ GPAEL/CBC & others as may be prescribed. | No requirement for this in the 1956 Act. |

AUDITOR-QUALIFICATIONS & DISQUALIFICATIONS

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| Auditor’s disqualifications – All companies | <p>The list of disqualifications for appointment as auditors under section 141 of the 2013 Act is longer than that under section 226(3) of the 1956 Act. The following are the new disqualifications that were not there in 1956 Act:</p> <ul style="list-style-type: none"> • A person or a firm who | <p>Much narrower list of disqualifications under the 1956 Act compared to the 2013 Act.</p> |
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| | <p>has business relationship with the company, or its subsidiary, or its holding company or subsidiary of such holding company or associate company of such nature as may be prescribed.</p> <ul style="list-style-type: none">• A person whose relative is a director or in the employment of the company as a director or key managerial personnel;• A person convicted for fraud and 10 years not elapsed from date of conviction;• A person whose subsidiary or associate company or any other form of entity is engaged in consulting and specialized services as provided in section 144 of the 2013 Act. | |
| Indebtedness of relative of auditor –All companies | Even if relative or partner of a person is indebted to the company, or its subsidiary, or its holding or associate company or a subsidiary of such holding company, the said person shall be disqualified from being appointed as auditor of a company. | Indebtedness of a relative was not a disqualification under the 1956 Act. |
| Indebtedness to an associate company –All companies | Disqualification for auditor | Not a disqualification for auditor |

RIGHTS & DUTIES OF AUDITORS

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| <p>Auditor's duty to comment regarding internal financial controls –All companies</p> | <p>The auditor's report to state whether company has adequate internal financial controls system in place and operating effectiveness of such controls.</p> | <p>No provision</p> |
| <p>Duty of auditor to report fraud to Central Govt. –All companies</p> | <ul style="list-style-type: none"> • If an auditor of a company, in the course of the performance of his duties as auditor, has reason to believe that an offence involving fraud is being or has been committed against the company by officers or employees of the company, he shall immediately report the matter to the Central Government within such time and in such manner as may be prescribed. • No duty to which an auditor of a company may be subject to shall be regarded as having been contravened by reason of his reporting the matter as above if it is done in good faith. • These provisions shall mutatis mutandis apply to a – <ul style="list-style-type: none"> (a) The Cost Accountant in practice conducting cost audit under section 148 of the 2013 Act; or (b) The Company Secretary in practice • If any auditor, cost accountant or Company Secretary in practice do not report fraud committed or being committed as above, he shall be punishable with | <p>No such duty / provisions</p> |

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| | fine which shall not be less than one lakh rupees but which may extend to twenty-five lakh rupees. | |
| Auditor not to render certain services-All companies | Section 144 of the 2013 Act specifies certain services not to be rendered by auditor to company or to its holding company or subsidiary. | No such provisions in the 1956 Act. |
| Auditor's attendance general meetings | Auditor shall, unless otherwise exempted by the company, attend any general meeting: (i) By himself or (ii) Through his authorized representative who is qualified to be an auditor.- PL/GPAEL | Auditors attendance at general meetings – Optional, not compulsory |

COST AUDIT

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| Companies required to maintain cost records-PL/GPAEL/CBC | <ul style="list-style-type: none"> Section 148 of the 2013 Act empowers the Central Government to prescribe cost records for any class or classes of companies engaged in prescribed services. Unlike 1956 Act, the 2013 Act also provides that before prescribing cost records in respect of any class of companies regulated under a Special Act, the Central Government shall consult the regulatory body constituted or established under such special Act. | Section 209(1)(d) of the 1956 Act empowered the Central Government to prescribe cost records (i.e. particulars relating to the utilization of material or labour or to such other items of cost) for any class of companies engaged in the production processing, manufacturing or mining activities. |
| Previous approval of Central Government for the Appointment of cost auditor - PL/GPAEL/CBC | The previous approval of Central Government is no longer required for appointment of cost auditor as section 148 of the 2013 Act dispenses with this | Previous approval of Central Government required for appointment of cost auditor |

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| | requirement. | |
| Remuneration of cost auditor- PL/GPAEL/CBC | Remuneration of cost auditor to be determined by members of the company in such manner as may be prescribed. | Determined by the Board of Directors. There was no requirement that it should be determined by members. |

APPOINTMENT OF DIRECTORS

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| Compulsory appointment of woman director | Such class or classes of companies as may be prescribed shall have a woman director.- PL/GPAEL may | No provisions regarding this in the 1956 Act. |
| At least 1 director who stayed in India for 182 days or more | Every company shall have at least one of the directors who has stayed in India for 182 days or more in the previous calendar year. | No provisions regarding this in the 1956 Act. |
| Independent director - PL/GPAEL | Listed public company shall have at least one-third of the total number of directors as independent directors. The Central Government may prescribe the minimum number of independent directors in case of any class or classes of public companies. An independent director shall not be entitled to stock options. He shall not be entitled to any remuneration other than sitting fee, reimbursement of expenses for participation in the Board and other meetings and profit related commission as may be approved by the members. | No such requirement in the 1956 Act. |

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| <p>Maximum number of directors - PL/GPAEL</p> | <p>Maximum number of directors in public company as well as private companies is 15. A company may appoint more than 15 directors after passing a special resolution. (No need for Central Govt. approval as under the 1956 Act to increase number of directors beyond permissible maximum).</p> | <p>No such requirement for private company.</p> <p>Maximum number of directors: 12 for public company.</p> <p>Need for Central Govt. approval to increase number of directors beyond permissible maximum.</p> |
| <p>Limitation of liability of non-executive directors and independent director- PL/GPAEL</p> | <p>Notwithstanding anything contained in this Act, -</p> <p>(i) An independent director, (ii) A non-executive director not being promoter or key managerial personnel, Shall be held liable, only in respect of such acts of omission or commission by a company which had occurred with his knowledge, attributable through Board processes, and with his consent or connivance or where he had not acted diligently.</p> | <p>No such provisions in the 1956 Act.</p> |
| <p>Declaration by person proposed to be appointed as director-All companies</p> | <p>Every person proposed to be appointed as a director shall furnish:</p> <p>(i) His DIN and (ii) A declaration that he is not disqualified to</p> | <p>No such declaration required.</p> |

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| | become a director under this Act. | |
| Board's opinion as to whether IDs fulfil the conditions specified for appointment as IDs- PL/GPAEL | In the case of appointment of an independent director (ID), the explanatory statement attached to notice of meeting shall state that in the opinion of the Board he fulfils the conditions specified in this Act for such an appointment. | No such provisions |
| Determining the 2 / 3rds of directors of public co. liable to retire by rotation- PL/GPAEL/S | For determining the "Not less than two-thirds of the total number of directors of a public company" liable to retire by rotation, "Total number of directors" shall not include independent directors, whether appointed under this Act or any other law for the time being in force. | No such provisions |
| Time limit for furnishing DIN to ROC-All companies | 15 days of receipt of information from the director of his DIN. | One week of receipt of intimation from the directors of his DIN. |
| Right of persons other than retiring directors to stand for directorship - All companies | <ul style="list-style-type: none"> • Section 160 of the 2013 Act applies to all companies • Section 160 provides for refund of deposit even if candidate gets more than 20% of total votes cast. • Under section 160 deposit is Rs.1,00,000 or such higher amount prescribed under the Rules. | <ul style="list-style-type: none"> • Section 257 of the 1956 Act was applicable only to public companies • Section 257 provided for refund of deposit only if candidate got elected as a director. • The deposit under section 257 was Rs.500 |

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| <p>Alternate Directors- PL/GPAEL</p> | <ul style="list-style-type: none"> • Section 161 of the 2013 Act provides that Board of Directors may, appoint a person, to act as an alternate director for a director during his absence from India for a period of not less than three months. • Section 161 requires that person appointed as alternate director should not be a person holding any alternate directorship for any other director in the company. The 1956 Act contained no such requirement. • Section 161 further provides that a person who is proposed to be appointed as an alternate director for an independent director should be qualified to be as an Independent director under the provisions of this Act. There was no such requirement in the 1956 Act. | <ul style="list-style-type: none"> • Section 313 of the 1956 Act empowered the Board of Directors to appoint a person, to act as an alternate director for a director ('the original director') during his absence for a period of not less than three months from the State in which meetings of the Board are ordinarily held. |
| <p>Nominee Directors- PL/GPAEL</p> | <ul style="list-style-type: none"> • Section 161 of the 2013 Act provides that subject to the articles, the Board may, appoint any person as a director nominated by an institution in pursuance of the provisions of any law for the time being in force or of any agreement or by | <p>No such provision in the 1956 Act.</p> |

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| | the Central Government or State Government by virtue of its shareholding in a Government company. | |
| Additional Directors – All companies | <ul style="list-style-type: none"> Section 162 of 2013 Act provides that the Board of Directors shall not appoint a person who fails to get appointed as a director in a general meeting as an additional director. | No such provision |
| Appointment of directors to be voted individually – All companies | <ul style="list-style-type: none"> Section 162 of 2013 Act applies to all companies. Section 263 of the 1956 Act provided that where a resolution for appointment of two or more persons as Directors is so moved and is passed, no provision for the automatic re-appointment of the directors retiring by rotation in default of any other appointment shall apply. The 2013 Act omits this provision. | Section 263 of the 1956 Act applied only to public companies. |

DISQUALIFICATIONS OF DIRECTORS

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| Disqualifications for appointment as director- All companies | <ul style="list-style-type: none"> The 2013 Act permanently debar from directorship of a company any person who is convicted of any offence and sentenced to imprisonment of 7 years or more. Section 164 of the 2013 Act contains the following two new grounds for disqualifying a person from directorships of companies which were not there in section 274 of the 1956 Act. <ul style="list-style-type: none"> he has been convicted of the offence dealing with related party | No such provision in the 1956 Act. |
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| | <p>transactions at any time during the last preceding five years;</p> <ul style="list-style-type: none"> ○ he has not obtained Director Identification Number. | |
| <p>Disqualifications of director if company commits specified defaults – All companies</p> | <ul style="list-style-type: none"> • Under section 164(2) of the 2013 Act, it does not matter whether the defaulting company is a public company or not. • Under s.164(2), if co. fails to file financial statements or fails to repay deposits. • Any person who is a director of such a defaulting company shall be disqualified to be re-appointed as a director of that company or appointed in other company for a period of five years from the date of the specified default. | <p>Under the 1956 Act, a person was disqualified from directorships if he was a director of a defaulting public company which had committed either of the specified defaults.</p> |
| <p>Exclusion of certain directorships for computing limit on maximum directorships – All companies</p> | <p>The 2013 Act omits these exclusions.</p> | <p>Section 278 of the 1956 Act provided for exclusion of certain directorships for the purposes of computing the limit on number of directorships.</p> |
| <p>Limit on maximum number of directorships – All companies</p> | <ul style="list-style-type: none"> • Maximum number of directorships that an individual can hold including alternate directorships is 20 of which not more than 10 can be of public companies. • General meeting by special resolution can specify lesser number than 20 / 10 companies. No such provision in 1956 | <p>15 directorships.</p> |



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DUTIES OF DIRECTOR

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| Duties of directors – All companies | Spelt out in section 166 of the 2013 Act based on case laws. | Not spelt out |
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VACATION OF OFFICE OF DIRECTOR

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| Vacation of office of director if he absents himself at Board meetings – PL/GPAEL/CBC | <ul style="list-style-type: none">• Section 167 of the 2013 Act provides that if a director absents himself from all the meetings of the Board of Directors held during a period of 12 months with or without seeking leave of absence of the Board, his office shall become vacant.• Section 167 of the 2013 Act is much more liberal in the sense that it requires director to attend at least one board meeting during a period of 12 months• However, section 283 of the 1956 Act authorized the Board to sanction a director's absence for any period of time which is not possible now under section 167 of the 2013 Act. | Section 283 of the 1956 Act provided that a director's office shall become vacant if he absents himself from three consecutive meetings of the Board of directors, or from all meetings of the Board for a continuous period of three months, whichever is longer, without obtaining leave of absence from the board. |
| Where all directors of company vacate their offices | <ul style="list-style-type: none">• Section 167 of the 2013 Act provides that where all the directors of a company vacate their offices, the promoter or, in his absence, the Central Govt. shall appoint the required number of directors who shall hold office till the directors are appointed by the company in the general meeting. | The 1956 Act never expressly provides for this situation. |

RESIGNATION OF DIRECTORS



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| Resignation of director | Section 168 of the 2013 Act deals with resignation of directors. | No provisions covering director's resignation. |
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REGISTER ETC., OF DIRECTORS

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| Return containing such particulars and documents as may be prescribed, of the directors and the key managerial personnel – All companies | Section 170 of the 2013 Act requires that a return containing such particulars and documents as may be prescribed, of the directors and the key managerial personnel shall be filed with the Registrar within 30 days from the appointment of every director and key managerial personnel, as the case may be, and within 30 days of any change taking place. | No requirement to file such return. |
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MEETING OF BOARD

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| Participation of directors in board meetings through video conferencing – PL/GPAEL/ CBC | The 2013 Act allows participation of directors in board meetings through video conferencing or other audio visual means, as may be prescribed. [Such participation to count for quorum purposes – See Section 174 of the 2013 Act]. | No enabling provision permitting such participation. |
| Notice for Board Meetings – All companies | <ul style="list-style-type: none">• Not less than 7 days notice to be given for board meetings.• Shorter notice may be given for board meeting to transact urgent business provided at least | Length of notice period not mentioned. |

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| | <p>one independent director, if any, shall be present at the meeting.</p> <ul style="list-style-type: none"> • If independent directors are absent from such Board meeting, decisions taken at such a meeting shall be circulated to all the directors and shall be final only on ratification thereof by at least one independent director, if any. | |
| Notice for Board meetings by electronic mode means – All companies | Notice for board meetings may be given by electronic means. | Not permitted |
| Frequency of BOD meetings – All companies | Not more than 120 days shall intervene between 2 consecutive Board Meetings. | Section 285 of the 1956 Act provided that a meeting of its Board of directors shall be held at least once in every three (calendar) months. |
| Where notice for BOD meetings to be served? – All companies | Notice should be given to every director at his address registered with the company. | Notice of board meeting be given to every director for the time being in India and at his usual address in India to every other director. |
| Quorum for meetings of BOD-- All companies | Participation of the directors at meeting of Board of directors by video conferencing or by other audio visual means shall also be counted for the purposes of quorum. | The 1956 Act did not recognize participating by video conferencing or by other audio visual means for quorum purposes. |
| If meetings could not be held as stipulated for want of quorum – All | No provision in 2013 Act along the lines of section 288(2) of the 1956 Act. | Section 288(2) of the 1956 Act provided that the provisions regarding minimum number of board |

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| companies | | meetings in a year and time gap between 2 meetings [See section 285 of the 1956 Act] not be deemed to have been contravened merely by reason of the fact that a meeting of the Board which had been called in compliance with the terms of that section could not be held for want of a quorum. |
| Circulation of draft resolution to directors by electronic means – PL/GPAEL/CBC | Section 175 of the 2013 Act contains an enabling provision to circulate draft resolution with necessary papers to directors or members of committee through such electronic means as may be prescribed. | No enabling provision for this. |
| Approval of resolution by circulation – PL/GPAEL/CBC | Section 175 of the 2013 Act provides that approval should be by a majority of the directors or members (of the committee), who are entitled to vote on the resolution. | Not required. |
| Noting and minuting resolution passed by circulation – PL/GPAEL/CBC | A resolution passed by circulation shall be noted at a subsequent meeting of the Board or the committee thereof, as the case may be, and made part of the minutes of such meeting. | Not required. |
| AUDIT COMMITTEE | | |
| For which companies it is mandatory to constitute audit committee.- PL/GPAEL/CBC may | Every listed company and <u>such other class or classes of companies, as may be prescribed.</u> | Every public company having paid-up capital of not less than five crores of rupees. |

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| <p>Composition of the audit committee- PL/GPAEL/CBC may</p> | <ul style="list-style-type: none"> • Minimum of three directors. • Independent directors forming majority. • Majority of members including chairperson shall be persons with ability to read and understand the financial statements. | <p>The Audit Committee shall consist of not less than three directors and such number of other directors as the Board may determine of which two-thirds of the total number members shall be directors, other than managing or whole-time directors.</p> |
| <p>Role and functions of the audit committee- PL/GPAEL/CBC may</p> | <ul style="list-style-type: none"> • Every audit Committee shall act in accordance with the terms of reference in writing by the Board which shall include, among other things- <ol style="list-style-type: none"> (i) The recommendation for appointment, remuneration and terms of engagement of auditors of the company. (ii) Review and monitor the auditor's independence and performance, and effectiveness of audit process, (iii) Examination of the financial statements and the auditors' report thereon, (iv) Approval or any subsequent modification of transactions of the company with related parties, (v) Scrutiny of inter-corporate loans and investments, (vi) Valuation of undertakings or assets of the company, wherever it is | <p>The Audit Committee should –</p> <ol style="list-style-type: none"> (a) Have discussions with the auditors periodically about; <ol style="list-style-type: none"> (i) Internal control systems, (ii) The scope of audit including the observations of the auditors and (b) Review the half-yearly and annual financial statements before submission to the Board and (c) Also ensure compliance of internal control systems. <ul style="list-style-type: none"> • The Audit Committee shall have authority to investigate into any matter in relation to the items specified in this section or referred to it by the Board and for this purpose, shall have full access to information contained in the records of the company and external professional advice, if necessary. |

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| | <p>necessary,</p> <p>(vii) Evaluation of internal financial controls and risk management systems,</p> <p>(viii) Monitoring the end use of funds raised through public offers and related matters.</p> <ul style="list-style-type: none"> The Audit Committee shall have authority to investigate into any matter in relation to the items (i) to (viii) above or referred to it by the Board and for this purpose shall have power to obtain professional advice from external sources to information and have full access to information contained in the records of the company. | |
| <p>Who shall have right to attend meetings of audit committee besides its members? - PL/GPAEL/CBC may</p> | <p>Auditors of a company and the key managerial personnel shall have a right to attend the meetings of the Audit Committee when it considers the auditor's report but shall not have the right to vote.</p> | <p>Auditors, the internal auditor, if any, and the director incharge of finance shall attend and participate at meetings of the Audit Committee but shall not have the right to vote.</p> |
| <p>Attendance at annual general meetings by Chairman of Audit Committee - PL/GPAEL/CBC may</p> | <p>Not obligatory under the 2013 Act.</p> | <p>The chairman of the Audit Committee shall attend annual general meetings of the company to provide any clarification on matters relating to audit.</p> |
| <p>VIGIL MECHANISM</p> | | |
| <p>Setting up vigil mechanism- PL/GPAEL/CBC may</p> | <p>Every listed company or such other class or classes of companies as may be prescribed shall establish a vigil mechanism for directors</p> | <p>No requirement in this regard.</p> |



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| | / employees to report genuine concerns in such manner as may be prescribed; details of vigil mechanism to be disclosed in Board's report. | |
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NOMINATION AND REMUNERATION COMMITTEE

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| Requirement to set up nomination and remuneration committee / Stake-holders' relationship committee | Required for certain companies - may be PL/GPAEL/CBC | Not required |
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POWERS OF BOARD

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| Powers of Board which can be exercised by the board only by passing a resolution at the Board meeting – All companies | <p>Powers of Board which can be exercised by the board only by passing a resolution at the Board meeting –</p> <ul style="list-style-type: none"> • to grant loans or 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 takeover a company or acquire a controlling or substantial stake in another company; • any other matter which may be prescribed: | Powers mentioned in column (2) were not in list of powers which can be exercised by the Board only passing a resolution at the Board Meeting. |
| Restrictions on powers of Board-All companies | <ul style="list-style-type: none"> • Applies to all companies. • Section 180 of the 2013 Act requires special resolution to exercise specified powers. • Section 180 defines the | <ul style="list-style-type: none"> • Applied only to public companies • Only required ordinary resolution to exercise specified powers. • Section 293 did not |

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| | <p>expressions “undertaking” and “substantially the whole of the undertaking” using 20% thresholds criteria.</p> <ul style="list-style-type: none"> • Section 180(1)(b) covers the power to invest the amount of compensation received as a result of any merger or amalgamation. | <p>define what was meant by the expressions “undertaking” and “substantially the whole of the undertaking” used in section 293(1)(a).</p> <ul style="list-style-type: none"> • Section 293(1)(c) covered the power to invest the amount of compensation received by the company in respect of the compulsory acquisition of any undertaking of the company. |
| <p>Powers of Board of Directors to Contribute to charitable funds- PL/GPAEL/CBC</p> | <ul style="list-style-type: none"> • Section 181 of the 2013 Act specifies the limit of 5% of its average net profits for the three immediately preceding financial year. There is no stipulation that net profits shall be calculated for this purpose as per section 198 of the 2013 Act. • Donations to charitable and other funds directly relating to the business of the company or the welfare of its employees not so excluded from the ambit of section 181 of the 2013 Act. | <ul style="list-style-type: none"> • Section 293(1)(e) of the 1956 Act as well as section 181 of the 2013 Act deal with restriction on board’s powers to contribute to charitable and other funds as donation in any financial year in excess of specified limit. • The 1956 Act specified the limit of Rs.50,000 or 5% of its average net profits as determined in accordance with the provisions of sections 349 and 350 (of the 1956 Act) during the three financial years immediately preceding, whichever is greater. Net profits to be calculated for this purpose as per sections 349 and 350 of the 1956 Act. |

DISCLOSURE OF INTEREST BY DIRECTOR

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| <p>Disclosure of interest by director – All companies</p> | <p>Disclosing concern or interest in any company or companies or bodies corporate, firms, or other association of individuals including the shareholding</p> | |
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| | and disclosure of interest or concern or arrangement are distinct requirements and both need to be complied with. | |
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LOANS TO DIRECTOR

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| Loans to directors etc. – All companies | <ul style="list-style-type: none"> • Under section 185 of the 2013 Act, there is total prohibition on making loans to or giving guarantee or providing security in connection with loan taken by director of company and specified parties. • The above prohibition shall not apply to the giving of any loan to a managing or whole-time director-(i) as a part of the conditions of service extended by the company to all its employees; or (ii) pursuant to any scheme approved by the members by a special resolution; | Loans made to or security provided or guarantee given in connection with loan taken by director of the lending company and certain specified parties required previous approval of the Central Government in that behalf. |
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RELATED PARTY TRANSACTIONS

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| Related transactions – Contracting parties covered – All companies | <p>'Related party' means:</p> <ul style="list-style-type: none"> (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 | <p>Following related parties covered by 1956 Act.</p> <ul style="list-style-type: none"> • A director of the company or his relative, • A firm in which such a director or relative is a partner, • Any other partner in such a firm, or • A private company of which the director is a member or director |
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| | <p>relatives, more than 2% of its paid-up share capital;</p> <p>(vi) Any body corporate of which a director or manager of the company is a shadow director;</p> <p>(vii) Any shadow director of the company (i.e., any person on whose advice, directions or instructions a director or manager of the company is accustomed to act);</p> <p>(viii) Any company which is-</p> <p>(A) a holding, subsidiary or an associate company of such company; or</p> <p>(B) co-subsidiary i.e., a subsidiary of a holding company to which it is also a subsidiary.</p> <p>(ix) Such other person as may be prescribed.</p> <p>The persons covered in items (vi) and (vii) above shall not be related parties if advice, directions or instructions are given by them in a professional capacity.</p> | |
| <p>Related party transactions – which contracting parties are covered-All companies</p> | <p>The following related party transactions are covered by section 188 of the 2013 Act:</p> <p>(a) Sale, purchase or supply of any goods or materials;</p> <p>(b) Selling or otherwise disposing of, or buying, property of any kind;</p> <p>(c) Leasing of property of any kind;</p> <p>(d) Availing or rendering of any services;</p> | <ul style="list-style-type: none"> • The purchase of goods and materials from the company, or the sale of goods and materials to the company, by any director, relative, firm, partner or private company as aforesaid for cash at prevailing market prices. • Any contract or contracts between the company on one side and any such director, relative, firm, |

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| | <p>(e) Appointment of any agents for purchase or sale of goods, materials, services or property;</p> <p>(f) Such related party's appointment to any office or place of profit in the company, its subsidiary company or associate company; and</p> <p>(g) Underwriting the subscription of any securities or derivatives thereof, of the company: No contract or arrangement, in the case of a company having a paid up share capital of not less than such amount, or transactions not exceeding such sums, as may be prescribed, shall be entered into except with the prior approval of the company by a special resolution.</p> | <p>partner or private company on the other for sale, purchase or supply and services in which either the company or the director, relative, firm, partner or private company, as the case may be, regularly trades or does business: Provided that the value of goods and materials or cost of services covered by the contracts do not exceed</p> <p>Rs.5000 in any year comprised in the period of the contract or contracts.</p> <ul style="list-style-type: none"> • In the case of a banking or insurance company any transaction in the ordinary course of business of such company with any director, relative, firm, partner or private company as aforesaid. • A director, relative, firm, partner or private company as aforesaid may, in circumstances of urgent necessity, enter, without obtaining the consent of the Board, into any contract with the company for the sale, purchase or supply of any goods, materials or services even if the value of such goods or cost of such services exceeds five thousand rupees in the aggregate in any year |
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OTHERS

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| <p>Register of contracts or arrangements in which directors are interested – PL/GAPEL</p> | <ul style="list-style-type: none"> • Limit of Rs.1,000 under the 2013 Act has been increased to Rs.5,00,000 by section 189 of the 2013 Act. • Section 189 requires that the register to be kept shall also be produced at the commencement of every annual general meeting of the company and shall remain open and accessible during the continuance of the meeting to any person having the right to attend the meeting. This is a new requirement and was not there in the 1956 Act. | <p>Section 301 of the 1956 Act exempted from the entry in the 'Register of contracts or arrangements in which directors are interested' any contract or arrangement for the sale, purchase or supply of any goods, materials or services if the value of such goods and materials or the cost of such services does not exceed Rs.1,000 in the aggregate in any year.</p> |
| <p>Restrictions on non-cash transactions involving directors – All companies</p> | <p>New provision –s.192- introduced by the 2013 Act.</p> | <p>No such restrictions in the 1956 Act.</p> |
| <p>Prohibition on forward dealings in securities of company by a key managerial personnel – PL/GAPEL</p> | <p>New provision -s.194 - introduced by the 2013 Act.</p> | <p>No provisions on this issue in the 1956 Act.</p> |
| <p>Prohibition on insider trading of securities – PL/GAPEL</p> | <p>New provision introduced by the 2013 Act.</p> | <p>No provisions on insider trading in the 1956 Act.</p> |

INTER CORPORATE LOANS AND INVESTMENTS

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| <p>Bar on making investment through more than 2 layers of investments companies</p> | <ul style="list-style-type: none"> • A company shall unless otherwise prescribed, make investment through not more than two layers of investment companies. • These provisions shall not affect: <ul style="list-style-type: none"> (i) A company from acquiring any other company incorporated | <p>No such bar in the 1956 Act.</p> |
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| | <p>in a country outside India if such other company has investment subsidiaries beyond two layers as per the laws of such country;</p> <p>(ii) a subsidiary company from having any investment subsidiary for the purposes of meeting the purposes of meeting the requirements under any law or under any rule or regulation framed under any law for the time being in force.</p> | |
| <p>Requirement to disclose inter corporate loans made by company, inter corporate investments in its financial statements – All companies</p> | <p>The company shall disclose to the members in the financial statements the full particulars of the loans given, investment made or guarantee given or security provided and the purpose for which the loan is proposed to be utilized by the recipient of the loan or guarantee or security.</p> | <p>No requirements for such disclosures in the 1956 Act.</p> |
| <p>Limits for making inter-corporate loans, investments etc. – All companies</p> | <ul style="list-style-type: none"> 60% of paid-up shares capital and free reserves and securities premium account or 100% of its free reserves and securities premium account, whichever is more. To exceed limit, prior approval of the company by special resolution is required. | <ul style="list-style-type: none"> 60% of company's paid-up shares capital and free reserves. To exceed limit, prior approval of the company by special resolution is required. |
| <p>Benchmark interest rate for inter corporate loans – All companies</p> | <p>Interest rate of dated Government security.</p> | <p>RBI's bank rate</p> |
| <p>Giving of guarantee in connection with loan to a</p> | <p>Not allowed</p> | <p>Section 372A of the 1956 Act permitted the giving of</p> |



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| <p>company, without being previously authorized by a special resolution. – All companies</p> | | <p>guarantee, without being previously authorized by a special resolution if – (a) a resolution is passed in the meeting of the Board authorizing to give guarantee in accordance with the provisions of this section; (b) there exists exceptional circumstances which prevent the company from obtaining previous authorization by a special resolution passed in a general meeting for giving a guarantee; and (c) the resolution of the Board is confirmed within twelve months, in a general meeting of the company or the annual general meeting held immediately after passing of the Board’s resolution, whichever is earlier.</p> |
| <p>Exemption for investments in loans to wholly owned subsidiary by holding company – CBC</p> | <p>No such exemption from the provisions of section 186 of the 2013 Act.</p> | <p>Such exemption was allowed from the provisions of section 372A of the 1956 Act.</p> |
| <p>Exemption to acquisitions by NBFCs</p> | <p>Allowed</p> | <p>Not Allowed</p> |

APPOINTMENT OF MANAGERIAL PERSONS

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| <p>Appointment of managing director, whole-time director or manager-All companies</p> | <p>No company shall re-appoint any person as its managing director, whole time director or manager earlier than one year before the expiry of his term.</p> | <p>Any re-appointment, re-employment or extension of managing director or manager earlier than one year before the expiry of his term.</p> |
| <p>Appointment of key</p> | <p>Compulsory for every</p> | <p>Compulsory for every public</p> |

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| <p>managerial personnel (KMP) –PL/GPAEL/CBC may</p> | <p>company belonging to <u>such class or classes of companies</u> to have the following whole-time key managerial personnel (i) MD or CEO or manager and in their absence a WTD, (ii) company secretary and (iii) CFO.</p> | <p>company and every private company which is a subsidiary of public company having paid-up capital of prescribed sum to appoint a whole-time director or manager. Also, it made it compulsory for every company having a paid-up capital of such sum as may be prescribed to appoint a whole-time secretary.</p> |
| <p>Separation of offices of Chairperson and MD / CEO – PL/GPAEL/CBC</p> | <ul style="list-style-type: none"> The 2013 Act bars an individual from being appointed chairperson as well as MD/CEO unless (i) articles provide otherwise or (ii) company does not carry on multiple business. However, such class of companies engaged in multiple businesses which have appointed one or more CEOs for each business are exempt from this provision. | <p>No such requirement.</p> |
| <p>Contents of Board resolution appointing KMP– PL/GPAEL/CBC</p> | <ul style="list-style-type: none"> The 2013 Act requires every whole-time KMP to be appointed by a board resolution containing terms and conditions of appointment including remuneration. | <p>No such stipulation in 1956Act.</p> |
| <p>Whole-time KMP in only one company– PL/GPAEL/CBC</p> | <p>A whole-time KMP not to hold office in more than one company except in its subsidiary company at the same time.</p> | <p>No such provision</p> |



VASHISTA & ASSOCIATES
ADVOCATES & SOLICITORS

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| In office of KMP vacated- PL/GPAEL/CBC | Resulting vacancy to be filled up by Board at a Board meeting within 6 months. | No provisions in this regard. |
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REMUNERATION OF MANAGERIAL PERSONNEL

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| Ratio of remuneration of each director to the median employee's remuneration - PL/GPAEL/CBC | Every listed company shall disclose in the Board's report the ratio of remuneration of each director to the median employee's remuneration and such other details as may be prescribed. | Such disclosure not required. |
| Receipt of remuneration / commission by MD / WTD from holding co. / subsidiary - PL/GPAEL/CBC | Any Managing Director or Whole-time director of the company who is in receipt of any commission from the company is not disqualified from receiving any remuneration or commission from any holding company of such company subject to its disclosure by the company in Board's report. | No provision in this regard. |
| Insurance- PL/GPAEL/CBC | <ul style="list-style-type: none">• Premium paid on insurance taken by a company for indemnifying any of its key managerial personnel against any liability in respect of any negligence, breach of duty or breach of trust shall not be treated as part of the remuneration payable to any such personnel.• If such person (KMP) is provided guilty, the premium paid on such insurance shall be treated as part of remuneration. | No provision in this regard. |

COMPANY SECRETARY / SECRETARIAL AUDIT

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| Secretarial audit for bigger companies - PL/GPAEL/CBC may | Mandatory secretarial audit by a company secretary in practice for listed companies and such class of companies as may be prescribed. Secretarial audit report to be annexed to BOD's report. | No such requirements. |
| Functions of Company Secretary – All companies | New provisions introduced by the 2013 Act. | No provisions on functions of Company Secretary in the 1956 Act. |

Schedule V of the 2013 Act: Conditions to be fulfilled for the appointment of a managing or whole-time director or a manager without the approval of the Central Government

Corresponding to Schedule XII of 1956 Act- All companies

- The following differences between Schedule V of the 2013 Act and Schedule XIII of the 1956 Act are as under:
 - (i) Schedule XIII of the 1956 Act contained a list of 15 enactments under which conviction of an offence and being sentenced to imprisonment for any period and fine not exceeding Rs.1000, was disqualification for appointment as MD/WTD / Manager. Schedule V of the 2013 Act adds one more enactment to the list – the Prevention of Money – Laundering Act, 2002. Conviction of an offence under the Prevention of Money-Laundering Act, 2002 (and sentenced to imprisonment for any period and fine not exceeding Rs.1000) is disqualification for appointment as MD/WTD/manager under Schedule V of the 2013 Act. This was not a disqualification under Schedule XIII of the 1956 Act. Schedule V has replaced some of the enactments in the original list of 15 in Schedule III with their new avatars-FERA, 1973 with FEMA, 1999; the 1956 Act with the 2013 Act, the MRTPL Act, 1973 with the Competition Act, 2002.
 - (ii) Minimum age limit for appointment as MD/WTD/manager was 25 years in Schedule XIII. However, anyone below 25 years but attained age of majority could be appointed if company passed a special resolution for this. Minimum age limit lowered by Schedule V of 2013 Act to 21 years minimum age limit is not relaxable by company.

- (iii) The Central Govt. is empowered to exempt by notification any class or classes of companies from any of the requirements of Schedule V. Central Govt. had no such power under the 1956 Act in respect of Schedule XIII.
- (iv) Under section II of Part II of both Schedule XIII of the 1956 Act as well as Schedule V of the 2013 Act, companies having no profits or inadequate profits are allowed to pay remuneration varying with effective capital without the Central Govt.'s approval. Schedule V has simplified the slabs and scale of remuneration by merging three slabs in Schedule XIII of the 1956 Act into one slab. Unlike Schedule XIII which capped remuneration at Rs.48,00,000 p.a. or Rs.4,00,000 per month Schedule V of the 2013 Act provides for removal of remuneration cap and provides that if effective capital exceeds Rs.100 crores, limit for remuneration shall be Rs.60 lakhs plus 0.01% of effective capital in excess of Rs.250 crores if effective capital is more than Rs.250 crores. The limits can be doubled by company by passing a special resolution which was not the case in Schedule XIII of 1956 Act.
- (v) Schedule V of the 2013 Act provides that in case of managerial person who is not holding securities of the company of nominal value of Rs.5 lakhs or more or an employee or director of company or not related to any director or promoter at any time during the 2 years prior to his appointment as managerial personnel – limit on remuneration is 2.5% of current relevant profit. This provision was not there in Schedule XIII of the 1956 Act.
- (vi) Section III of Part II of Schedule V has special provisions for newly incorporated companies for 7 years after incorporation, sick companies, remuneration fixed by BIFR or NCLT, SEZ. In these cases, remuneration in excess of limits in Section II of Part II can be paid without Central Govt's prior approval. This was not the case in Schedule XII of the 1956 Act.