IONS OF COMPANIES ACT, 1956 WITH COMPANIES ACT,

	panies Act,	Provisions of Companies Act, 2013	Comments
Contents	Contains 658 Sections and 15 Schedules	Contains 29 chapters with 470 clauses and with 7 schedules.	_
Types of Company that can be formed.	Public or private Company which can be limited by shares /limited by guarantee or unlimited Company.	Besides Public and Private Company, clause 3 also provides for One Person Company as a Private Company.	This clause corresponds to Section 12 of Companies Act, 1956 and seeks to provide minimum number of persons to form a public or private (including One Person Company) for any lawful purpose, by subscribing their names to the memorandum.
One Person Company(OPC)- Clause 3	Such a concept was absent.	OPC can be formed.	Any person can create a Private limited Company with only one person as its member. Memorandum of OPC shall indicate the name of a person who shall become member, in the event of death of the single member. Following are the advantages: · No requirement for holding an AGM · Minimum number of Directors. · Minimum one Board Meeting in each half of a

			calendar year.
Reservation of name for proposed Company procedural aspects	Procedural aspects not covered.	Provides for making an application for reservation of new name or change of name of an existing company to the ROC on payment of prescribed fees.	
Penalty for obtaining name by providing wrong or incorrect information.	No recourse provided.	If company is not incorporated, reserved name shall be cancelled after imposing a penalty not exceeding Rs. 100,000; and If Company is incorporated the ROC may give direction to change name within 3 months by passing ordinary resolution or Make a petition for winding up of the company.	
Maximum number of Members for private co. Clause 2(68)	The maximum number of members is restricted to 50.	The maximum number is restricted to 200.	
Financial year	Financial Year was defined as in relation to any body corporate, the period in respect of which any profit and loss account of the body corporate laid before it in	Financial year as defined in clause 2(41) requires Company or body corporate to adopt uniform	With the intention to have a uniformity in financial year, the term 'financial year' is redefined.

	eting is that period is a year or not.	financial year of 1st April to 31st March every year except in certain exceptional cases. Existing Companies not adopting 1 April to 31 March as financial year for Companies Act purposes to align themselves with 1 April-31 March within two years of commencement of the Companies Act, 2012.	
Concept of Key Managerial Personnel	Not defined.	Key Managerial Personnel in relation to a company means- i) the Chief Executive Officer or the Managing Director, or the Manager ii) the Company Secretary iii) the whole time director iv) the Chief Financial Officer v) such other officer as may be prescribed	This is a new term. In the entire Bill, Key Managerial Personnel (KMP) have been made responsible for major decisions.
Deemed public Company	Considers a private company which is a subsidiary of a public company as a public company.	Further enhanced to provide that a private subsidiary of a public company deemed to be a public company.	
Entrenchment provisions in	No such provision existed.	Articles may provide for	

Clause 5		more stringent or restrictive procedure than passing of special resolution for altering certain provisions of the AoA (like a provision can be altered only if agreed to by all the members of the company in writing).	
Registered Office	This clause corresponds to section 146 and 147 of the Companies Act, 1956 and seeks to provide that from the date of incorporation and at all times thereafter, a company shall have a registered office capable of receiving and acknowledging all communications and notices addressed to it.	· A company shall, on and from the 15th day of its incorporation and at all timesthereafter have a registered office capable of receiving and acknowledging all communications and notices as may be addressed to it. · Company is required to furnish to the Registrar verification of its registered office within 30 days of its incorporation in the prescribed manner. Where a company has changed its name(s) during the last two years, it shall paint or affix or print, along with its name, the former name or names so changed during the last two years. • Notice of change, verified in the manner prescribed, shall be given to	Under the new law, the company must have a registered office on and from the fifteenth day of its incorporation.

		the Registrar, within 15 days of the change, who shall record the same.	
Commencement of Business Clause 11	Under Companies Act, 1956 a public limited company having share capital cannot commence business until it has obtained the certificate to commence business (COB) from the concerned Registrar of Companies.	A company having a share capital shall not commence business or exercise any borrowing powers unless a declaration is filed with Registrar by a director verified in the manner as may be prescribed that: · every subscriber to the memorandum has paid the value of shares · agreed to be taken by him; · Paid-up capital is not less than Rs. five lakhs in the case of public · company and one lakh in case of a private company. · the company has filed with the Registrar the verification of its registered · office.	Under the Companies Act of 1956, it is required that the Certificate of commencement be obtained only by public companies, while in the Bill it is required that all the companies obtain the commencement Certificate from the Registrar.
Public offer and Private Placement Clause 23	No such provision.	This chapter is divided into two parts. Part I relates to 'Public offer' and Part II relates to 'Private Placement' • "Public offer" includes initial public offer or further public offer of securities to	New clause introduced in the Bill. For clarity, the entire chapter relating to issue of securities has been divided into two parts. Part I relates to issue

		the public by a company, or an offer for sale of securities to the public by an existing shareholder, through issue of a prospectus.' • The term 'private placement' has been defined to bring clarity. "Private placement" means any offer of securities or invitation to subscribe securities to a select group of persons by a company (other than by way of public offer) through issue of a private placement offer letter and which satisfies the conditions specified in this section.	of public offer Part II relates to issue of securities through private placement.
Women Director Clause 149(1)	No such Provision	At least one woman director shall be on the Board of such class or classes of companies as may be prescribed.	
Independent Directors Clause 149		All listed companies shall have at least one-third of the Board as independent directors. • Such other class or classes of public companies as may be prescribed by the Central Government shall also be required to appoint independent directors. • The independent director has been clearly defined in the Bill. • Nominee director nominated by any financial institution, or in pursuance	For removing any ambiguity, the term Independent Director has been defined under the Bill.

		of any agreement, or appointed by any government to represent its shareholding shall not be deemed to be an independent director. • An independent director 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. • An Independent director shall not be entitled to any stock option. • Only an independent director can be appointed as alternate director to an independent director. [clause 161(2)].	
Director to stay in India for 182 Days Clause 149(3)		Every company shall have at least one director who has stayed in India for a total period of not less than one hundred and eighty-two days in the previous calendar year.	
Certification Of annual Return Clause 92	Section 159 provided for only 7 details to be specified in the Annual Return.	Annual Return must be certified by a Practicing company secretary and requirement of compliance certificate by practicing company secretary is dispensed with. The annual return should contain particulars like: (a) The extract of the	Reference to Schedule V provided in the existing Act has been omitted since the form of annual return will be prescribed in the rules.

		annual return as provided under sub-section (3) of sec 92. (b) Number of meetings of the Board. (c) Directors' Responsibility Statement; (d) A statement on declaration given by independent directors under sub-section. And also PCS to certify that all the provisions of the Companies Act has been complied with	Contents of Annual Return have been revamped in the Bill keeping in view the need of relevant disclosures required in present context.
Board meeting and Notice of Board Meeting Clause 173	Section 286 merely provided for notice of BMs to be given to directors in writing but did not specify the length of such notice.	· At least seven days' notice is required to be given for a Board meeting. The notice may be sent by electronic means to every director at his address registered with the company. [clause 173(3)]. · Atleast 4 meeting should be held each year. There is no requirement of holding the meeting every quarter; the only requirement is that not more than 120 days shall elapse between two consecutive meetings. · A Board Meeting may be called at shorter notice subject to the condition that	

		atleast one independent director, if any, shall be present at the meeting. However, in the absence of any independent director from such a meeting, the decisions taken at such meeting shall be final only on ratification thereof by at least one independent director. [clause 173(3)].	
Postal Ballot for passing the resolutions Clause 110	This clause corresponds to Section 192A of the Companies Act, 1956. Till now postal Ballot is applicable only for listed Company.	Postal ballot is applicable to private limited companies also for certain transactions after the amendment prescribed by the central government by notification.	
Corporate Social responsibility Clause 135	Did not exist.	· Every company having net worth of rupees 500 crore or more, or turnover of rupees 1000 crore or more or a net profit of rupees 5 crore or more during any financial year shall constitute a Corporate Social Responsibility Committee of the Board consisting of three or more directors, out of which at least one director shall be an independent director. · The CSR Committee shall formulate and recommend Corporate Social Responsibility Policy which shall indicate the activity or activities to be undertaken by the company	The provisions relating to Corporate Social Responsibility have been introduced under the Bill. Now, every company having net worth of rupees five hundred crore or more, or turnover of rupees one thousand crore or more or a net profit of rupees five crore or more during any financial year shall constitute a Corporate Social Responsibility Committee.

		as specified in schedule VII and shall also recommend the amount of expenditure to be incurred on the CSR activities. · The Board of every company shall ensure that the company spends in every financial year atleast 2% of the average net profits of the company made during the three immediately preceding financial years in pursuance of its CSR policy. · Where the company fails to spend such amount, the Board shall in its report specify the reasons for not spending the amount. The approach is to 'comply or explain'.	
Schedule VII (Corporate Social Responsibility)		Activities which may be included by companies in their Corporate Social Responsibility Policies Activities relating to:— (i) Eradicating extreme hunger and poverty; (ii) Promotion of education; (iii) Promoting gender equality and empowering women; (iv) Reducing child morality and improving maternal health;	

		(v) Combating human immunodeficiency virus, acquired immune deficiency syndrome, malaria and other diseases; (vi) Ensuring environmental sustainability; (vii) Employment enhancing vocational skills; (viii) Social business projects; (ix) Contribution to the Prime Minister's National Relief Fund or any other fund set up by the Central Government or the State Governments for socio-economic development and relief and funds for the welfare of the Scheduled Castes, the Scheduled Tribes, other backward classes, minorities and women; and (x) such other matters as may be prescribed.	
Compulsory Internal Audit Clause 138	No such provision existed.	Prescribed class of companies shall be required to appoint an internal auditor to conduct internal audit of the functions and activities of the company.	Certain class or classes of companies, as may be prescribed, shall be required to appoint a chartered accountant or a cost accountant, or such other professional as may be decided by the Board, to conduct internal audit of the functions and

			activities of the company.
Rotation of Statutory Auditors Clause 139(2)	As per Section 224 of the Companies Act, 1956, every company shall, at each annual general meeting, appoint an auditor or auditors to hold office from the conclusion of that meeting until the conclusion of the next annual general meeting and shall, within seven days of the appointment, give intimation thereof to every auditor so appointed.	· An auditor will be appointed in the first annual general meeting for a five-year term. Thereafter, the auditor will be changed as per the members' decisions. · Secondly, an audit firm cannot be re-appointed for more than two five-year terms. (i.e. 10 years) For re-appointment purposes for the individual auditor or audit firm, there has to be a gap of five years. Moreover, for appointment or re-appointment purposes, there should be no common partners between the new firm and old audit firm. Another interesting clause is that members can resolve to ask the audit firm to rotate the audit partner and team every year. The company shall inform the auditor concerned of his or its appointment, and also file a notice of such appointment with the Register within fifteen days of the meeting in which the auditor is appointed. Every company shall comply with the requirements of this sub-section within three years from the date of commencement of this Act	Now every company shall, at its first annual general meeting, appoint an individual or a firm as an auditor who shall hold office from the conclusion of that meeting till the conclusion of its 6th Annual General Meeting and thereafter till the conclusion of every 6th meeting. However the company shall place the matter relating to such appointment for ratification by members. In the Bill, the written consent of auditor to such appointment is to be obtained before his appointment is made.

Duties of Directors Clause 166	Not Specifically provided.	1. A director of a company shall act in good faith in order to promote the object of the company. 2. A director of a company shall exercise his duties with due care, skill and diligence. 3. A Director of a company shall not assign his office and any assignments so made shall be void. 4. If a director of the company contravenes the provisions of this section such director shall be punishable with fine which shall not be less than Rs.1, 00,000/- but which may extend to Rs.5, 00,000/-	New provision. Duties of directors are specifically provided under the Bill. They have been made responsible to work in the best interests of company, its employees, shareholders, the community and for the protection of environment.
Borrowing Powers Clause 180	The exemption given to private limited company for borrowings under Section 293 is withdrawn	Borrowing powers now require approval by shareholders and applicable to both private and public limited companies.	
Loans and investments not to be made through more than two layers of investment Companies. Clause 186	No such provision existed in section 372A of the companies act, which dealt with inter corporate loans and investments.	Clause 186 provides that investments not to be made through more than 2 layers of investment companies. The rate of interest on inter corporate loans will be the prevailing rate of interest on dated Government Securities.	A company cannot make investment through more than two layers of investment companies. The provision would help the Government to have track on the complex web of

			subsidiary firms. Exceptions to the clause are also provided. Investment company is defined under the clause as explanation.
Related party transactions. Clause 188	Section 297 covered only sale and purchase of goods, rendering of services , underwriting the subscription of any shares or debentures. Where paid up share capital of the company exceeds Rs. 1 crore, prior approval of the Central Govt. required. Not applicable to contracts between two public companies.	Also covers leasing of property, appointment of agent for the sale or purchase, related party's appointment to any office or place of profit in the company, its subsidiary or associate company. Prior CG approval done away it and only Members approval required by way of a special resolution. Applicable to contracts between two public companies as well.	The following transactions also require the approval of Board : - selling or otherwise disposing of, or buying, property of any kind; - leasing of property of any kind; - availing or rendering of any services; - appointment of any agent for purchase or sale of goods, materials, services or property; - such related party's appointment to any office or place of profit in the company, its subsidiary company or associate company; and - underwriting the subscription of any securities or derivatives thereof,

			of the company.
Loan to Director Clause 185	Section 295 not applicable to private companies and prior approval of the Central Government required.	Central Government approval done away with and applicable to private companies as well.	
Appointment of Key Managerial Personnel Clause 203	Section 269 provides that every public company having capital of more than Rs 5 crore to have a Managing director/WTD/Manager.	Appointment of Key Managerial Personnel – Every company belonging to such class or description of companies as may be prescribed shall have the following whole time Key Managerial Personnel: 1. Managing Director or Chief Executive Officer or Manager and in their absence a Whole Time Director. 2. Company Secretary	Concept of KMP introduced Every prescribed class of companies shall have a whole-time key managerial personnel. Every company belonging to prescribed class or classes of companies is compulsorily required to appoint MD or CEO or manager and CS and
Secretarial Audit Report Clause 204	No provision.	· Every listed company and company belonging to other class of companies as may be prescribed shall annex with its Board's report a secretarial audit report given by Practicing Company Secretary in such form as may be prescribed. · The Board of Directors, in their report shall explain in full any qualification or observation or other remarks made by the Company Secretary in	This is a new provision. All listed and other prescribed companies are required to annex with its Board's report, a Secretarial audit report given by a company secretary in practice.

		Practice in his report. · If a company or any officer of the company or the Company Secretary in Practice, contravenes the provisions of this section, the company, every officer of the company or the Company Secretary in Practice, who is in default, shall be punishable with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees.	
Books of Accounts in electronic form. Clause 128	Not Permitted.	Provides for electronic maintenance of the same.	Every company shall now be required to prepare and keep at its registered office, financial statements along with books of account and other relevant books and papers for every financial year including its branch offices if any and explain the transactions effected both at the registered office and its branches. The option has been given to the companies to maintain books of accounts in the

			electronic mode.
Statutory recognition to Secretarial Standards (SS) Clause 118(10)	SS were recommendatory	· For the first time, the Secretarial Standards has been introduced and provided statutory recognition. · Clause 118 provides that every company shall follow SS with respect to General and Board Meetings andapproved by the Cent. Govt. Clause 205 provides that functions of a CS, shall, inter-alia include ensuring compliance with the applicable SS.	
Appointment of managing director, whole-time director or manager. Clause 196	The exemption given to private limited company under section 269 for appointment of Managing Director is withdrawn.	Provision relating to the appointment of Managing Director is also applicable to the private limited companies.	The provision requires a company not to appoint or re-appoint any person as its managing director (MD), whole-time director (WTD) or manager for a term exceeding five years at a time. This provision is applicable to every company.

Quorum for meeting of Board Clause 174	The quorum for a meeting of the Board of directors of a company shall be one-third of its total strength (any fraction contained in that one-third being rounded off as one), or two directors, whichever is higher	The quorum for a meeting of Board of Directors of a Company shall be one – Third of its total strength or two directors, whichever is higher, and the Directors participating by video conferencing and other audio visual means shall be counted as quorum.	
Penalty for tampering with minutes. Clause 118(12)	No such provision existed.	Any person found guilty of tampering any minutes of the proceeding of any meeting shall be punishable with imprisonment which may extend upto two years and with fine which shall not be less than Rs.25000 but which may extend to Rs.100000.	
Transfer of shares to Investor Education & Protection Fund (IEPF) Clause 124	Only unclaimed dividend to Be transferred to IEPF.	Along with the unclaimed dividend, the shares on which dividend is unclaimed, also to be transferred to the IEPF.	
Additional disclosures in the Board Report (BR)	Section 217	Clause 134(1) has stipulated new disclosures in BR like: · Number of meetings of	

		Board; · Statement of declaration by independent directors; · Company's policy on director appt/remuneration; · Explanation on every qualification made by PCS in his report; · Particulars of loans, guarantee, investment; · Related party contracts; · Implementation of risk management policy; · Policy developed on Corporate Social Responsibility; · Statement of formal evaluation of the performance of the board and its committees in case of listed and public companies, as may be prescribed.	
Duties of auditor/secretarial auditor/cost auditor to report fraud to the Central Government. Clause 143(12)-(14)	No such provision existed.	Auditors/CWA/CS to inform the fraud to the Central Government within prescribed time and manner and the same shall not be construed as breach of duty.	

… resign. Clause 140(2)/(3)	… existed.	Retiring auditor to file a statement with the ROC as well as the Company, within 30 days of resignation, indicating reasons and other facts that may be relevant with regard to his resignation.	
Tribunal may direct company to change its auditors. Clause 140(5)	Section 224(7) provided for removal of auditors before the expiry of their term, only with the prior approval of the Central Government.	Clause 140(5) provides that the Tribunal may, by order, direct the company to change its auditors on being satisfied that the auditors has acted in a fraudulent manner or abetted or colluded in any fraud.	
Power of Registrar to Remove name of a company from Register. Clause 248	Section 560 provided for the ROC to sue motto strike off the company as a defunct company if it has reasonable cause to believe that a Co. is not carrying on its business or in operation.	Clause 247-give sue motto powers to the ROC and also power to members holding 75% of the paid up share capital of the company to apply to the ROC for striking off the name of a company as a defunct company. Grounds for name removal specified.	