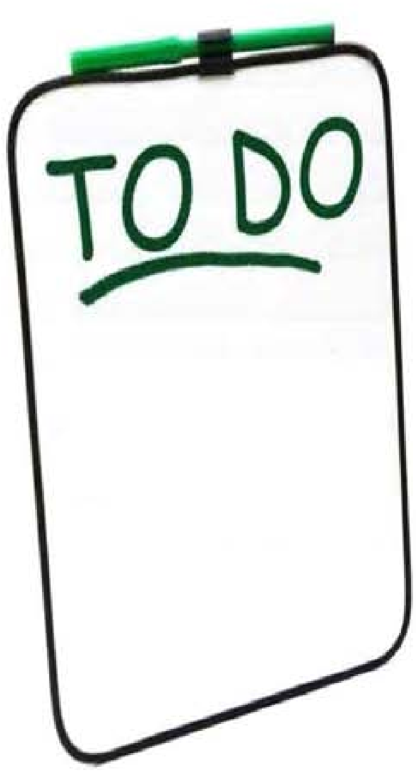
IMPLEMENTING THE COMPANIES ACT, 2013

AN EASY REFERENCER



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AN EASY REFERENCER UNDER THE COMPANIES ACT, 2013

ON

PRIVATE COMPANIES,

UNLISTED PUBLIC COMPANIES

&

LISTED COMPANIES

Companies Act, 2013 (The Act) has brought with enormous changes in almost all spheres of corporate management and administration. The Act requires the companies, its management and its officers (and of course the professionals!) not only to understand the provisions in a fresh perspective but also to implement many of them with immediate effect. Many of the provisions of the Act do not have any transition period thereby meaning that w.e.f. 01.04.2014 or wherever applicable from 12.09.2013, the companies are required to immediately re-mould themselves and align to the provisions of the new Act in furtherance of their business and objectives.

In the current writeup, we have made an attempt to provide a checklist, separately for each class of company, which the companies might find handy in their process of implementation of the Act. Many of the provisions may be common for all the three classes of companies; nevertheless they have been mentioned in each of the checklist for sake of clarity and easy reference.

1. **CORPORATE IDENTITY NUMBER**

   Every company has to get its name, address of its registered office, Corporate Identification Number along with its telephone no, fax no, if any email and website addresses, if any, printed in all its business letters, bill heads, letter papers and in all its notices and other official publications immediately. Former name should come if there is name change [Sec 12]

2. **FINANCIAL YEAR**

   Companies need to align their financial year from 1st April to 31st March within 2 years, if it has a different financial year except in case of aligning the financial year with that of parent company [Sec 2(41)]

3. **HOLDING-SUBSIDIARY**

   No company shall hold shares in its holding company [sec 19]

4. **ALTERATION IN MoA & AoA**

   Object clause in MoA not required to be divided in main, ancillary and other objects. Only the objects for which the company is incorporated along with other matters considered necessary may be mentioned.

   Articles of association may contain provisions of entrenchment. Alteration to AoA to include entrenchment provisions require consent by all members in case of private company

5. **CORPORATE SOCIAL RESPONSIBILITY**

   If net worth 500 Crores or more / turnover 1000 Crores or more / net profit of 5 Crores or more shall form a CSR committee consisting of 3 or more directors (1 independent director), spend atleast 2% of average net profits on CSR activities (Sec 135)

6. **AUDITORS**

   - If Private Company has paid-up capital of Rs. 20 Crores or more, cooling off period of appointment of auditor is applicable (rule 5)
     - Individual – 5 consecutive yrs (one term)
     - Firm of auditor - 2 terms of 5 consecutive yrs.
     - Transition period of 3 years is provided for existing auditor
   - Cannot appoint a person as auditor if he is already auditor for 20 other companies

7. DIRECTORS

- Every Director should have a Digital Signature
- Companies need to have at least one director on their Board who is resident in India
- Company can appoint more than 15 directors after passing special resolution.
- A person can only hold max 20 directorship (10 can be public company). Includes private companies and alternate directorship
- General disclosure of interest has been made mandatory to be given by all directors every year in the first board meeting. Specific disclosure required in case of interested contracts
- Company cannot appoint its MD, WTD or manager for a term exceeding 5 years at a time.
- Directors are required to forward their resignation to RoC within 30 days
- The appointment of MD/WTD to be approved by special resolution in general meeting if such appointment is not in accordance with schedule V.
- Before appointment / reappointment directors shall disclose their disqualification in Form DIR 8
- The company shall immediately file the details of all directors in prescribed form (Form DIR-9), If it fails to file the financial statements or annual returns, or fails to repay any deposit, interest, dividend, or fails to redeem its debentures
- duties of directors are specifically provided under the Act and Rules.
- Every person or Company should mention the DIN of Director in all forms, information or particulars which relates to the director or containing any reference of any director.

8. BOARD MEETING

- Minimum number of meetings to be held in a year – 4
- Each director has to attend physically atleast one meeting in a year. If he fails to attend all meeting during 12 months, he will be deemed to have vacated office automatically.
- Board meeting through video conferencing is allowed (except for approval of annual financial statement and Board's report)
- At-least 7 days notice to be given for Board meeting - Writing or electronic mode
- Between 2 consecutive board Meetings, difference should not be more than 120 days;
- New list of businesses are included in the list of powers which can be exercised by the Board only by passing a resolution at Board meeting.
- Certain Board resolutions are also required to be filed with the ROC in form MGT-14 within 30 days

9. **ANNUAL GENERAL MEETING**
   - AGM to be held during the business hours – between 9.00 AM to 6.00 PM
   - Not to be held on a National holiday
   - Quorum for the meeting – 2 Members personally present
   - General meeting can be held with shorter notice with 95% of shareholders approval

10. **INTERNAL AUDIT IS MANDATORY FOR A PRIVATE COMPANY HAVING**
   - Turnover 200 Crores or more during the preceding financial year
   - Outstanding loans or borrowings from bank or other financial institutions exceeding Rs.100 Crores or more at any point of time during the preceding financial year

11. A company having subsidiary or associate company, shall prepare a consolidated financial statement, in addition to its financial statements and shall lay the same for approval in AGM.

12. Directors report shall provide additional information such as number of board meeting, company policy on directors appointment and remuneration, particulars of loan, guarantee, investment etc.

13. **LOANS AND INVESTMENTS (SEC 185 AND 186)**
   - No company shall provide any loan, book debt, guarantee to any of its director or any other person in whom the director is interested. (sec 185)
   - Company can't do investment through more than 2 layers of investment companies
   - Prior approval of the company by special resolution is required to provide loan, guarantee or to acquire by way of subscription or purchase of securities, exceeding 60% of paid-up capital, free reserve and securities premium account or 100% of free reserve and securities premium reserve, whichever is higher.

14. The Companies has to maintain all the statutory registers as per the new format prescribed under the new Act and Rules.

15. Notice of change of situation of registered office shall be given to RoC within 15 days [1Sec. 2(4)]

16. May issue further shares through right issue, bonus issue, private placement [Sec. 23(2)]

17. Rights of a particular class of shares may be varied through special resolution [Sec 48]

18. Prohibited to accept loans/deposit from relatives of directors & members

19. Books of accounts may be kept in electronic form.

20. The Act provides that every company shall observe "Secretarial Standards to Minutes" with respect to general and board meetings specified by the Institute of Company Secretaries of India.

21. If the preference shareholder's dividend are in arrear for more than 2 years, they can vote on all resolutions of the company (sec 47)

REFERENCER FOR UNLISTED PUBLIC COMPANIES

1. **CORPORATE IDENTITY NUMBER**

   Every company has to get its name, address of its registered office, Corporate Identification Number along with its telephone no, fax no, if any email and website addresses, if any, printed in all its business letters, bill heads, letter papers and in all its notices and other official publications immediately. Former name should come if there is name change [Sec 12]

2. **FINANCIAL YEAR**

   Companies need to align their financial year from 1st April to 31st March within 2 years, if it has a different financial year except in case of aligning the financial year with that of parent company [Sec 2(41)]

3. **HOLDING-SUBSIDIARY**

   No company shall hold shares in its holding company [sec 19]

4. **ALTERATION IN MoA & AoA**

Object clause in MoA not required to be divided in main, ancillary and other objects. Only the objects for which the company is incorporated along with other matters considered necessary may be mentioned.

Articles of association may contain provisions of entrenchment. Alteration to AoA to include entrenchment provisions require consent by all members in case of private company

5. **CORPORATE SOCIAL RESPONSIBILITY**

If net worth 500 Crores or more / turnover 1000 Crores or more / net profit of 5 Crores or more shall form a CSR committee consisting of 3 or more directors (1 independent director), spend at least 2% of average net profits on CSR activities (Sec 135)

6. **AUDITORS**

All unlisted companies having paid-up share capital of Rs.10 Crores or more shall appoint auditor on the following terms.

- Individual – 5 consecutive yrs (one term)
- Firm of auditor - 2 terms of 5 consecutive yrs.
- Transition period of 3 years is provided for existing auditor
- cannot appoint a person as auditor if he is already auditor for 20 other companies

7. **DIRECTORS**

- Every Director should have a Digital Signature
- Companies need to have at least one director on their Board who is resident in India
- Company can appoint more than 15 directors after passing special resolution.
- A person can hold max 20 directorship (10 can be public company) includes private companies and alternate directorship
- General disclosure of interest has been mandatory to be given by all directors every year. Specific disclosure required if interested in any contract
- Company cannot appoint its MD, WTD or manager for a term exceeding 5 years at a time.
- every public company with paid-up capital of Rs.100 crores or more or turnover of 300 crores or more, should have a women director
- Directors are required to forward their resignation to RoC within 30 days
- Before appointment / reappointment directors shall disclose their disqualification in Form DIR 8
- The company shall immediately file the details of all directors in prescribed form (Form DIR-9), If it fails to file the financial statements or annual returns, or fails to repay any deposit, interest, dividend, or fails to redeem its debentures
- Duties of directors are specifically provided under the Act and Rules.
- Every person or Company should mention the DIN of Director in all forms, information or particulars which relates to the director or containing any reference of any director.

8. INDEPENDENT DIRECTORS (ID)

- Unlisted Public companies should have at least 2 Independent Directors if, paid-up capital is 10 Croresores or more, Turnover is 100 Croresores or more, outstanding loan, debenture, deposit exceeds 50 Croresores
- Maximum tenure for ID - 2 terms of 5 yrs each
- Reappointment after cooling period is 3 yrs

9. KEY MANAGERIAL PERSONNEL

- Every public company having paid-up capital of 10 Crores or more shall appoint following whole time key managerial personnel - MD or CEO or manager and in their absence a WTD and a Company Secretary and a CFO.

10. BOARD MEETING

- Minimum no of meetings to be held in a year – 4
- Each director has to attend at least one meeting in person in a year
- Board meeting through video conferencing is allowed (except for approval of annual financial statement and Board's report)
- At-least 7 days notice to be given for Board meeting - Writing or electronic mode
- Difference between 2 consecutive board Meetings cannot be more than 120 days.
- New list of businesses are included in the list of powers which can be exercised by the Board only by passing a resolution at Board meeting.
- certain Board resolutions are also required to be filed with the ROC in form MGT-14 within 30 days

11. ANNUAL GENERAL MEETING

- AGM to be held during the business hours – between 9.00 AM to 6.00 PM
- Not to be held on National holiday
- Quorum for the meeting (sec 103)
  - Upto 1000 - 5 members personally present
  - Upto 5000 – 15 members personally present
  - Exceeds 5000 – 30 members personally present
- E-voting is mandatory is number of shareholders is 1000 or more
- General meeting can be held with shorter notice with 95% of shareholders approval

12. INTERNAL AUDIT is Mandatory for

Every Unlisted public company having

- paid-up capital is 50 Crores or more, or turnover of Rs.200 Crores during the preceding financial year
- outstanding loans and borrowings 100 Crores or more at any point of time during preceding financial year
- o/s deposit Rs.25 Crores or more at any point of time during the preceding financial year

13. **COMMITTEES TO BE FORMED**

- Stakeholders relationship committee if – no. of share/debenture/deposit holders – exceeds 1000
- Nomination and remuneration committee and Audit committee - if paid-up capital is Rs.10 Crores or more; Turnover Rs.100 Crores or more, aggregate outstanding loans and borrowings debenture or deposits exceeds 50 Crores or more

14. A company having subsidiary, joint venture or associate company, shall prepare a consolidated financial statement, in addition to its financial statements and shall lay the same for approval in AGM (Sec. 129)

15. **ANNUAL RETURN** of public company if having paid-up capital of Rs.10 Crores or more or turnover of Rs.50 Crores or more shall be certified by a company Secretary in practice.

16. **SECRETARIAL AUDIT** report given by a company Secretary in practice need to be annexed in Boards report if public company is having paid-up capital of Rs.50 Crores or more or turnover of Rs.200 Crores or more

17. Act provides duties of company Secretaries under the Act and Rules.

18. The Companies has to maintain all the statutory registers as per the new prescribed format under the new Act and Rules.

19. Notice of change of situation of registered office shall be given to RoC within 15 days [1Sec. 2(4)]

20. May issue further shares through right issue, bonus issue, private placement [Sec. 23(2)]

21. Rights of a particular class of shares may be varied through special resolution [Sec 48]

22. Prohibited to accept loans/deposit from relatives of directors & members

23. Books of accounts may be kept in electronic form.

24. Acceptance of Deposit Prior to commencement of CA 2013

- If the company accepted deposit prior to the commencement of the Act, it shall file a statement containing the details of deposits due and other related details within 3 months from the date of commencement of the Act or from the due date on which the payments are due. (DPT 4)(Sec74)
- To repay the deposits that is due on the due date.

1. **CORPORATE IDENTITY NUMBER**
   Every company has to get its name, address of its registered office, Corporate Identification Number along with its telephone no, fax no, if any email and website addresses, if any, printed in all its business letters, bill heads, letter papers and in all its notices and other official publications immediately. Former name should come if there is name change [Sec 12]

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   If net worth 500 Crores or more / turnover 1000 Crores or more / net profit of 5 Crores or more shall form a CSR committee consisting of 3 or more directors (1 independent director), spend at least 2% of average net profits on CSR activities (Sec 135)

6. **AUDITORS**
   Listed companies shall appoint auditors on following terms
   - Individual – 5 consecutive years (one term)
   - Firm of auditor - 2 terms of 5 consecutive years.
   - Transition period of 3 years is provided for existing auditor
   - cannot appoint a person as auditor if he is already auditor for 20 other companies

7. DIRECTORS

- Every Director should have a Digital Signature
- Companies need to have at least one director on their Board who is resident in India
- Company can appoint more than 15 directors after passing special resolution.
- A person can hold max 20 directorship (10 can be public company) includes private companies and alternate directorship
- General disclosure of interest has been mandatory to be given by all directors every year in the first board meeting of the financial year. Specific disclosure required if interested in any contract
- Company cannot appoint its MD, WTD or manager for a term exceeding 5 years at a time.
- Women Director - Listed companies should have at least 1 women director within 1 year
- Directors are required to forward their resignation to RoC within 30 days
- Before appointment / reappointment directors shall disclose their disqualification in Form DIR 8
- The company shall immediately file the details of all directors in prescribed form (Form DIR-9), If it fails to file the financial statements or annual returns, or fails to repay any deposit, interest, dividend, or fails to redeem its debentures
- Duties of directors are specifically provided under the Act and Rules.
- Director and Company should mention the DIN of Director in all forms, information or particulars which relates to the director or containing any reference of any director.

8. INDEPENDENT DIRECTORS (ID)

- Listed Companies should have 1/3 of directors as ID
- Maximum tenure for ID 2 terms of 5 yrs each
- Reappointment after cooling off period is 3 yrs

9. Every listed company shall appoint following whole time key managerial personnel - MD or CEO or manager and in their absence a WTD and a Company secretary and a CFO

10. Listed companies are required to file a return with registrar regarding change of more than 2% in shareholding of the promoters or top 10 shareholders, within 15 days of such change.

11. Internal audit is mandatory

12. **BOARD MEETING**

- Minimum no of meetings to be held in a year – 4
- Each director has to attend physically atleast one meeting in a year. If he fails to attend all meeting during 12 months, he will be vacated from office
- Board meeting through video conferencing is allowed (except for approval of annual financial statement and Board's report)
- At-least 7 days notice to be given for Board meeting - Writing or electronic mode
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- Not to be held on National holiday
- Quorum for the meeting (sec 103)
  - Upto 1000 - 5 members personally present
  - Upto 5000 – 15 members personally present
  - Exceeds 5000 – 30 members personally present
- E-voting is mandatory.
- General meeting can be held with shorter notice with 95% of shareholders approval
- Every listed company shall file with RoC a copy of report of AGM in the prescribed form including the confirmation that meeting was convened, held and conducted as per the Act and rules within 30 days (sec 121)

14. Directors report shall provide additional information such as number of board meeting, company policy on directors appointment and remuneration, particulars of loan, guarantee, investment,CSR, Evaluation of board etc

15. A company having subsidiary or associate company, shall prepare a consolidated financial statement, in addition to its financial statements and shall lay the same for approval in AGM.

16. A company shall not provide any loan, book debt, guarantee to any of its director or any other person in whom the director is interested except

- in the case of loan to WTD as part of condition of service extended by the company to all its employees
- loan in ordinary course of business and interest charged being not less than bank rate (sec 185)

17. LOANS AND INVESTMENTS (SEC 186)

- Company can't do investment through more than 2 layers of investment companies
- Prior approval of the company by special resolution is required to provide loan, guarantee or to acquire by way of subscription or purchase of securities, exceeding 60% of paid-up capital, free reserve and securities premium a/c or 100% of free reserve and securities premium reserve, whichever is more

18. Act provides duties of company secretaries.

19. The Companies has to maintain all the statutory registers as per the new format prescribed under the new Act and Rules.

20. Books of accounts may be kept in electronic form.

21. May issue securities through Prospectus, Private placement, Right / bonus issue by following the prescribed procedure. (sec 23)

22. Shares other than sweat equity cannot be issued at discount (sec 53)

23. Issue of irredeemable preference shares is prohibited. May issue preference shares for a period not exceeding 20 years (Sec 55)

24. No public company shall give, directly / indirectly any financial assistance (loan/guarantee) for purchase of its own shares (Sec. 67)

25. Annual return of listed companies shall be certified by a company secretary in practice. (Sec. 92)

26. SECRETARIAL AUDIT report given by a company Secretary in practice need to be annexed to Boards report.

27. Audit committee and nomination/remuneration committee is mandatory. Stakeholder committee to be formed if number of members exceeds 1000.

28. Every company shall observe "Secretarial Standards to Minutes" with respect to general and board meetings specified by the ICSI.

29. Many information require posting on website of the company

30. To establish vigil mechanism.

31. E-voting is mandatory for all general meetings.

PROFESSIONAL LIFE –

ENDLESS POSSIBILITIES

WITH

BORDERLESS SUCCESSES

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