CS NILESH PATEL

B.Com, ACS, LL.B., MBL

&

Laxmi Joshi

B.Com, CS

COMPANIES ACT, 2013

Provisions applicable to Private Company

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DIRECTORS

The new Companies Law expects a lot of discipline from the Directors. Explicit provisions relating to duties on directors have been introduced for the first time which attempts to create high responsibility on Directors. While there has been significant overhauling with reference to the Board processes, many new restrictions have been imposed on the directors.

The new law calls for increased contribution and compliances from the director and the liability of the directors are expressly provided. The punishment for offence committed by the directors as well as company has been increased significantly.

S.No.	Section/Provision	Compliance
1.	**149** **Company to have Board of Directors**	The ***maximum limit of directors*** in the Company has been increased to ***15*** from 12 as provided in the Companies Act 1956. The number can be increased ***beyond 15*** by passing ***special resolution***, no approval of government is required. Out of all the Directors, at least ***one director*** shall be a person who has ***stayed in India*** for a total period of ***not less than 182 days*** in the previous calendar year. ***(Resident director)***
2.	**152** **Appointment of Directors**	Every person becoming a Director has to give i. a ***declaration(Form DIR-8)*** that the is not disqualified to become a director under this Act. ii. ***consent (Form DIR -2)*** for appointment as a director.
3.	**158** **Obligation to indicate Director Identification Number.**	Director shall mention his Director Identification Number while furnishing any return, information or particulars, as required to be furnished under the Act.
4.	**164** **Disqualifications for appointmentof director.**	Director shall be disqualified for re-apppointed in that company and appointment in other company for a period of 5 years from the date company in which he is director fails to file financial statements or annual returns for any continuous period of 3 financial years; or fails to repay the deposits or interest thereon or to redeem any debentures on the due date or pay interest thereon or to pay any dividend for continuous period of 1 year or more.
5.	**165** **Number of directorship**	Total companies in which person can become a Director ***shall not exceed 20***. Out of this 20, he ***cannot be director of more than 10 public Companies.***

		Transition period: Within ***one year*** from commencement of the Act, every Director has to re-structure his directorships as per the maximum number allowed.
6.	**167** **Vacation of office of director**	A director shall vacate his office, if he ***fails to attend all the meeting of board for consecutive period of 12 months*** and most importantly, he has to vacant office, ***even if leave of absence*** has been ***granted*** to him/her.
7.	**168** **Resignation of director**	Directors are required to mandatorily ***forward their resignation*** along ***with detailed reason*** for resignation also *to t**he Registrar within 30 days of resignation form DIR 11.*** The fact of such resignation is to be placed in the immediately following general meeting in the report of directors by the company.
8.	**173** **Meetings of Board**	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 meetings***.
		Now a ***notice of not less than 7 days in writing*** is required to call a Board meeting and notice of meeting to ***all Directors*** shall be given, whether he is ***in India or outside India by hand delivery or by post or by electronic means.***
		The Act provides that Directors may participate in a meeting of the Board either in person or through video conferencing or other audio visual means.
9.	**179** **Powers of Board**	Following ***powers*** have been introduced to be ***exercised*** by the ***Board only at the meeting***: 1. to ***issue securities*** including debentures, whether in India or outside; 2. to make ***calls on shareholders*** in respect of money unpaid on their shares 3. to ***borrow monies*** 4. to ***invest the funds*** of the company 5. to authorise ***buy-back of securities*** under section 68 6. to grant ***loans*** or give ***guarantee*** or provide ***security*** in respect of loans; 7. to ***approve financial statement*** and the ***Director's Report***; 8. to ***diversify the business*** of the Company;

		9. to approve ***amalgamation, merger or reconstruction***; 10. to ***take over*** a Company or acquire a controlling or substantial stake in another Company; 11. to make ***political contributions;*** 12. to ***appoint or remove*** key managerial personnel ***(KMP)***; 13. to take note of ***appointment(s) or removal(s) of one level below*** the Key Management Personnel ***(KMP)***; 14. to ***appoint internal auditors and secretarial auditor***; 15. to take note of the ***disclosure of director's interest and shareholding***; 16. to ***buy, sell investments*** held by the company (other than trade investments), constituting 5 % or more of the paid up share capital and free reserves of the investee company; 17. to ***invite or accept or renew public deposits*** and related matters; 18. to review or change the terms and conditions of public deposit; 19. to ***approve quarterly, half yearly and annual financial statements*** or financial results as the case may be.
10	**180** **Restrictions on powers of Board.**	The following ***powers*** can be ***exercised by board with the approval of members in general meeting*** by way of passing a ***special resolution***: 1. to ***sell, lease or otherwise dispose of*** the whole or substantially the whole of the ***undertaking*** of the company. ***2.*** to ***invest otherwise in trust securities*** the ***amount*** of compensation ***received*** by it ***as a result*** of any ***merger or amalgamation.*** 3. to ***borrow money***, where the money to be borrowed, together with the money already borrowed by the company will ***exceed aggregate of its paid-up share capital and free reserves***. ***4.*** to ***remit,*** or give time for the repayment of, ***any debt due from a director.***
11	**184** **Disclosure of interest by Directors**	In case of Private Company also, an interested Director cannot vote or take part in the discussion relating to any matter in which he is interested.
12	**185** **Loan to directors, etc.**	No company, whether public or private can give any loan (including loan represented by book debt) or provide any security or guarantee in connection with a loan to a Director or any other person in whom he is interested. Company can give loan to Managing Director/ Whole Time Director

		without approval of shareholders where the loan is given as a part of the condition of service extended by the Company to all its employees or by way of passing a special resolution.
13	**188** **Related party transactions**	The following transactions are introduced as ***related party transactions*** under the Act for which ***approval of Board*** will be required: 1. sale, purchase or supply of any goods or materials. 2. selling or otherwise disposing of, or buying, property of any kind. 3. leasing of property of any kind. 4. availing or rendering of any services. 5. appointment of any agent for purchase or sale of goods, materials, services or property 6. such related party's appointment to any office or place of profit in the company, its subsidiary company or associate company. 7. underwriting the subscription of any securities or derivatives thereof, of the company. No approval of Central Government is required for entering into any related party transactions. No approval of Central Government is required for appointment of any Director or any other person to any office or place of profit in the Company or its Subsidiary.
14	**192** **Restriction on non-cash transactions involving directors**	A Company shall not enter into any arrangement by which a Director of the Company or of its Holding Company or any person connected with him can acquire assets for the consideration other than cash from the Company & vice versa without the approval of Company in general meeting
15	**196** **Appointment of managing director, whole-time director or manager**	The appointment of Managing Director/ Whole Time Director /Manager shall be approved by ***general meeting by ordinary resolution*** and if appointment is ***not in accordance with schedule V,*** then ***approval of Central Government*** is also required. Managing Director/ Whole Time Director /Manager shall ***not to be appointed for more than 5 years.***

ACCOUNTS AND AUDIT

The New Companies Law provides for drastically reformed provisions so as to upgrade the entire audit standards and systems to bring them in line with globally accepted practices and make auditors more liable. While on one hand, a clear effort has been made to avoid any alignment of interest of promoters and auditors by way of provisions such as rotation of Auditor, restriction in availing non audit services from the Auditor and on the other hand, effort has been made to make the auditors more accountable by way of strengthening of internal financial reporting system, enhanced liability and responsibility of Auditor, provisions of recasting and reopen accounts by the Company.

S.No.	Section/Provision	Compliance
1.	**Financial year**	"Financial year", in relation to any company or body corporate, means the ***period ending on the 31st day of March every year.*** This ***requirement*** in case of a company or body corporate, existing on the commencement of 2013 Act, is to be ***complied within a period of 2 years from commencement of 2013 Act.*** A company or body corporate, which is a holding company or a subsidiary of a company incorporated outside India and is required to follow a different FY for consolidation of its accounts outside India, the NCLT may allow any period as its FY, whether or not that period is a year.
2.	**128** **Books of account, etc., to be kept by company**	The company ***may*** now ***keep*** books of account or other relevant papers in ***electronic mode***.
3.	**129** **Financial Statement**	The term ***Balance Sheet & Profit & Loss Account***, has been defined collectively as financial statement under the Act, ***cash flow statement and statement showing changes in equity*** if any of the Company also forms part of the same.
		Company is also required to attach along with its financial statement, a separate ***statement containing the salient features of the financial statement of its subsidiary*** or subsidiaries, ***associate*** company or companies and ***joint venture*** or ventures in **form AOC-1.**
		Along with financial statement, consolidated financial statement of all subsidiaries and company will be prepared and shall also be ***laid before the Annual General Meeting***

4.	**130** **Re-opening of accounts on court's or Tribunal's orders.**	A company can ***re-open its books of accounts or re-cast its financial statements on the ground*** that the relevant ***earlier accounts were prepared in a fraudulent manner or the affairs of the company were mismanaged*** during the relevant period casting a doubt on the reliability of the financial statements. Such re-opening or re-casting of its financial statements is ***permissible if an application is made by CG, IT authorities, SEBI or any other statutory regulatory body or authority or any person concerned and an order is made by a Court or NCLT.***
5.	**131** **Voluntary revision of financial statements or Board's report.**	Directors may prepare revised financial statement or a revised board report in respect of any of the 3 preceding financial years after obtaining approval of NCLT, if it believes that the financial statements or the Board report do not comply with the relevant provisions.
6.	**134** **Financial statement, Board's report, etc**	Director's Report to include amongst others, extract of the Annual Return, development and implementation of a risk management policy and CSR, related party contracts, certain loan / guarantees / investments and in case of listed and prescribed public companies – annual evaluation of the performance of the BOD.
		The Directors' Responsibility Statement to include the statement that the directors had devised proper systems to ensure compliance with the provisions of all applicable laws and that such system were adequate and operating effectively.
7.	**139** **Appointment of Auditors**	***Auditors to hold office till conclusion of 6th AGM, subject to ratification by members at every AGM.***
		The members of company may resolve: If Audit firm is appointed, the audit partner and his team shall rotate at such intervals as may be resolved by members. Audit shall be conducted by more than 1 auditor (i.e. joint auditor).
		Casual vacancy in the office of auditor shall be filled by the Board of Directors within 30 days and where such vacancy is due to resignation of auditor, it shall also be approved by members within 3

		months of the recommendation of the Board.
8.	**141** **Eligibility, qualifications and disqualification of auditors.**	***Qualification*** of auditors: ***Individual – Chartered Accountant*** ***Firm – Majority of partners practicing in India*** are ***qualified*** for appointment. If LLP is appointed as auditor, ***only partners who are CA shall be authorized to sign.*** Additional grounds for disqualifications for appointment as auditor provided.
9.	**144** **Auditor not to render certain services.**	Auditor cannot provide following services "directly or indirectly" to the company or its holding company or subsidiary company, namely accounting and book keeping services; internal audit; design and implementation of any financial information system; actuarial services; investment advisory services; investment banking services; rendering of outsourced financial services; management services; any other kind of services as may be prescribed.

MANAGEMENT AND ADMINISTRATION

In the formulation of New Companies Law, one of the focal areas has been the interest of the Investors. The Law seeks to strengthen the position of Investor by empowering them on one hand and on other hand, by enforcing stricter provisions towards Investors interest on the part of Companies.

At the same time, by way of instilling the drive of Corporate Governance in the entities through various initiatives such as enhance disclosure and transparency, strengthening of Board processes, disinterested shareholder voting in Related party Transaction, rotation of auditor, streamlined process of fund raising etc. the new law provides for safeguards to ensure that the investor interest is best protected and any activity undertaken in the company with mala fide intent is well checked.

Sr. No.	Section/Provision	Compliance
1.	**92** **Annual Return**	Annual Return to contain additional information relating to remuneration of directors and KMP, details of meetings of members, BOD and its various committee, etc. The annual return shall be signed by the company secretary, or where there is no company secretary, by the director of the company. An extract of the annual return shall form part of the Board's report.
2.	**96** **Annual general meeting**	AGM shall be called during the ***business hours i.e. between 9.00 AM and 6.00 PM on any day other than a National Holiday*** and shall be held either ***at the registered office*** of the company or at some other place within the city, town or village in which the registered office of the company is situate.
3.	**101** **Notice of meeting**	A general meeting of a company may be called by giving ***not less than clear 21 days notice either in writing or through electronic mode.*** For calling a general meeting at a ***shorter notice, consent of at least 95% of the members entitled to vote*** is required for both AGM and EGM
4.	**102** **Statement to be annexed to notice**	Explanatory statement to be annexed to the notice of general meeting to ***set out nature of concern or interest, if any, of director, KMP and their relatives*** in respect of each item of business to be transacted at such meeting and also provide ***such other information and facts that may enable members to understand the meaning, scope and implications of the items of business*** and to take decision thereon.

DIVIDEND

The new Companies Act does not provide any major changes in declaration and payment of dividend. The key changes which are provided under the new act are voluntary transfer of percentage of profit to the reserve before declaring dividend and declaration of interim dividend at a rate not higher than average dividend in case of loss.

S.No.	Section/Provision	Compliance
1.	**123** **Declaration and payment of dividend**	Dividend to be paid out of profits of the company for the year after providing for depreciation; or profits of the previous years arrived at after providing for depreciation and remaining undistributed; or out of both.
		Companies may ***voluntarily transfer a portion of its profits to reserves.*** Mandatory transfer of profits to reserves before declaration of dividend done away with.
		Interim dividend may be declared only out of surplus in Profit & Loss Account and out of profits of the FY in which dividend is sought to be declared. In case a company has incurred losses up to the preceding quarter of the current FY then interim dividend shall not be declared at a rate higher than the average dividend declared by the company during the immediately preceding 3 FYs.
		Dividend to be ***distributed within 30 days of its declaration in cash only.*** Dividend cannot be distributed in kind.
		Failure to comply with provisions relating to acceptance and repayment of deposits will prevent a company to declare any dividend during the period of such non-compliances.
2.	**124** **Unpaid Dividend Account**	Where unpaid / unclaimed dividend has been transferred to IEPF, the corresponding shares on which such dividend was unpaid / unclaimed shall also be transferred by the company to IEPF.

VISHAKA GUIDELINES AGAINST SEXUAL HARASSMENT IN THE WORKPLACE

The present civil and penal laws in India do not adequately provide for specific protection of women from sexual harassment in work places and that enactment of such legislation will take considerable time, it is necessary and expedient for employers in work places as well as other responsible persons or institutions to observe certain guidelines to ensure the prevention of sexual harassment of women.

		Guidelines
1.	**Duty of the Employer or other responsible persons in work places and other institutions**	It shall be the duty of the employer or other responsible persons in work places or other institutions to prevent or deter the commission of acts of sexual harassment and to provide the procedures for the resolution, settlement or prosecution of acts, of sexual harassment by taking all steps required.
2.	**Preventive Steps**	• Express prohibition of sexual harassment at the work place should be notified, published and circulated in appropriate ways • Steps should be taken to include the aforesaid prohibitions in the standing orders under the Industrial Employment (Standing Orders) Act, 1946. • Appropriate work conditions should be provided in respect of work, leisure, health and hygiene to further ensure that there is no hostile environment towards women at work places and no employee woman should have reasonable grounds to believe that she is disadvantaged in connection with her employment.
3.	**Criminal Proceedings**	Where such conduct amounts to a specific offence under the Indian Penal Code or under any other law, the employer shall initiate appropriate action in accordance with law by making a complaint with the appropriate authority. In particular, it should ensure that victims, or witnesses are not victimized or discriminated against while dealing with complaints of sexual harassment. The victims of sexual harassment should have the option to seek transfer of the perpetrator or their own transfer.
4.	**Disciplinary Action**	Where such conduct amounts to misconduct in employment as defined by the relevant service rules, appropriate disciplinary action should be initiated by the employer in accordance with those rules.

5.	**Complaint Mechanism**	Whether or not such conduct constitutes an offence under law or a breach of the service rules, an appropriate complaint mechanism should be created in the employer's organisation for redress of the complaint made by the victim. Such complaint mechanism should ensure time bound treatment of complaints.
6.	**Complaints Committee**	The complaint mechanism, referred above, should be adequate to provide, where necessary, a Complaints Committee, a special counsellor or other support service, including the maintenance of confidentiality. The Complaints Committee should be headed by a woman and not less than half of its member should be women. Further, to prevent the possibility of any undue pressure or influence from senior levels, such Complaints Committee should involve a third party, either NGO or other body who is familiar with the issue of sexual harassment. The Complaints Committee must make an annual report to the Government department concerned of the complaints and action taken by them. The employers and person in charge will also report on the compliance with the aforesaid guidelines including on the reports of the Complaints Committee to the Government department.
7.	**Worker's Initiative**	Employees should be allowed to raise issues of sexual harassment at a workers 'meeting and in other appropriate forum and it should be affirmatively discussed in Employer-Employee Meetings.
8.	**Awareness**	Awareness of the rights of female employees in this regard should be created in particular by prominently notifying the guidelines (and appropriate legislation when enacted on the subject) in a suitable manner.
9.	**Third Party Harassment**	Where sexual harassment occurs as a result of an act or omission by any third party or outsider, the employer and person in charge will take all steps necessary and reasonable to assist the affected person in terms of support and preventive action.