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Checklist for Action Points under Companies Act, 2013

Dear professional Colleague,

Please find enclosed herewith a checklist under Companies Act, 2013 for your reference and record purpose. However this checklist is not an exhaustive one but I am very hopeful that this checklist will help you to tackle new provisions of Companies Act, 2013 in most compliant matter.

Further as per my opinion this Article is also very handy for student as far as study and understanding of Companies Act, 2013 is concerned. Companies Act, 2013 is applicable for November 2014 examination for CA students and December 2014 examination for CS Students.

S. No.	Particulars with Section	Effective Date & Applicability	Action Proposed / Required	Remarks / Comments
1.	Change in Letterheads, Bills etc. [Section 12(3)(c)]	01.04.2014 Public & Private Company	Needs immediate action. (In case the letterheads already printed, please affix a rubber stamp to comply with additional disclosures.)	[Section 12(3)(c)] : Every company shall get its name, address of its registered office and the Corporate Identity Number (CIN) along with telephone number, fax number, if any, E-mail and website addresses, if any, printed in all its business letters, billheads, letter papers and in all its notices and other official publications.
2.	Resident Director [Section 149(3)]	01.04.2014 Public & Private Company	Needs no further action (Already complied).	One Director in the Board shall be a person who has stayed in India for a total period of not less than 182 days during the previous calendar year. [Section 149 (3)].
3.	Board Meetings [Section 173(1)]	01.04.2014 Public & Private Company	Needs immediate action.	➤ Gap between 2 consecutive board meetings should not be more than 120 days. [Section 173 (1)]. 4 months as per Listing Agreement. ➤ Minimum 4 meetings in a year (Same provision in listing agreement).

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				➤ At-least 7 days notice to be given for Board meeting;
4.	Loan to Directors [Section 185]	12.09.2013 Public & Private Company	Needs immediate action w.r.t. existing loans, if any.	✓ Now, restriction related to Loan to Director is also applicable to private companies; ✓ All Companies including Private companies are restricted from giving loans, advances or providing securities guarantees to directors and other interested entities. ✓ Imprisonment could not be avoided by fully repaying the loan.
5.	Further issue of shares [Section-62]	01.04.2014 Public & Private Company	For Future action.	➤ Now provisions related to preferential issue shall also be applicable on private companies. ➤ Now a Private Company cannot allot further shares to a new person without complying section 62.
6.	Related Party Transactions [Section-188]	01.04.2014 Public & Private Company	Immediate attention required.	The Company shall not enter into any contract or arrangement with a related party except with the consent of the Board given by a resolution at its meeting, with respect to specified matters. [Section 188 (1)]. ➤ No contract or arrangement shall be entered into with Related Party except with the prior approval of the company by a special resolution if paid up capital is Rs. 10 Crore or more. ➤ No member of the company shall vote on such special resolution, if such member is a related party [Section 188 & Rules 12.14].

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				➤ Nothing herein shall apply to any transactions entered into by the company in its ordinary course of business other than transactions which are not on an arm's length basis. ➤ "Arm's length transaction" means a transaction between two related parties that is conducted as if they were unrelated, so that there is no conflict of interest. ➤ Every aforesaid contract or arrangement shall be referred to in the Board's report along with the justification for entering into such contract. ➤ No approval of the Central Government now required for entering into related party transactions.
7.	Corporate Social Responsibility (CSR) [Section-135 read with CSR Rules]	01.04.2014 Public & Private Company	Immediate attention required. Applicability of Section: i. Net worth 500 Crore or More ii. Turnover 1000 Crore or More iii. Net Profit 5 Crore or More in any financial year.	➤ The Board of company shall ensure that the company spends, in every financial year, at least 2% of the average net profits of the company (calculated as per section 198) made during the three immediately preceding financial years, in pursuance of its CSR Policy. ➤ (Draft) Corporate Social Responsibility Rules, 2013 already published for public comments, which shall be applicable from financial year 2014-15 and will come into force on publication in the official gazette.
8.	Obligation to indicate DIN Number	01.04.2014 Public & Private	Immediate attention required.	Every person or Company should mention the DIN in all forms, information or particulars which relates to the director or containing any reference of any

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	[Section-158]	Company		director while furnishing the same.
9.	Auditor [Section-139]	01.04.2014 Public & Private Company	A transition period of 3 years from the commencement of the Act is available.	➤ Compulsory rotation of individual Auditors in every 5 years and of audit firm in every 10 years in listed companies. Cooling off period is 5 years. ➤ All private limited companies having paid up share capital of rupees 20 Crore or more is bound to follow rotation of auditor u/s 139(2). ➤ A transition period of 3 years from the commencement of the Act, prescribed to comply with the said provision of the rotation of Auditors.(Section 139).
10.	Consolidation of Accounts [Section-129(3)]	01.04.2014 Public & Private Company	Immediate attention required.	All Companies having subsidiaries need to prepare consolidated accounts. Consolidated and stand alone financial statements both will be laid down in AGM. ➤ Here subsidiary includes Associates and Joint Ventures.
11.	Appointment of Internal Auditor [Section-138]	01.04.2014 Public & Private Company	Immediate attention required. A transition period of 6 months from the commencement of the Act is available.	Compulsory appoint of internal auditor or a firm of internal auditors by following companies: ❖ Every listed company; ❖ Every unlisted public company having- (i) paid up share capital of 50 Crore rupees or more during the preceding financial year; or

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				(ii) turnover of 200 crore rupees or more during the preceding financial year; or (iii) outstanding loans or borrowings from banks or public financial institutions exceeding 100 crore rupees or more at any point of time during the preceding financial year; or (iv) outstanding deposits of 25 crore rupees or more at any point of time during the preceding financial year; and ❖ Every private company having- (i) turnover of 200 rupees or more during the preceding financial year; or (ii) outstanding loans or borrowings from banks or public financial institutions exceeding 100 Crore rupees or more at any point of time during the preceding financial year:
12.	Formalities for appointment of Directors [Section-152]	01.04.2014 Public & Private Company	Immediate attention required.	Pre-conditions for appointment of a new director: 1. DIN [Section-152(3)] 2. Declaration in Form DIR-8, that he is not disqualified to be appointed as Director; [Section-152(4)] 3. Consent Letter; (Form DIR-2) [Section-152(5)] 4. Not carrying any disqualification u/s 164
13.	Disclosure of Interest by Directors [Section-184(1)]	01.04.2014 Public & Private Company	Immediate attention required	In Companies Act, 2013, annual general disclosure of interest is required to be collected in form MBP.1 from all the directors' u/s 184(1). Further as per section 117(3) and section 179(3)(k) read with rule 8(5), copy of board resolution passed for taking

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				note of disclosure of interest is required to be filed with ROC in form MGT.14 .
14.	Compulsory Appointment of Rotational Auditor [Section-139(2)]	01.04.2014 Public & Private Company	Immediate attention required	As per Section 139(2): No listed company or a company of such class as may be prescribed, shall appoint or re-appoint— (a) an individual as auditor for more than one term of five consecutive years; and (b) an audit firm as auditor for more than two terms of five consecutive years: Section 139(2) read with Rule 5 of The Companies (Audit and Auditors) Rules, 2014 (Chapter 10). For the purposes of section 139(2), the class of companies shall mean the following classes of companies excluding one person companies and small companies:- (a) all unlisted public companies having paid up share capital of rupees 10 crore or more; (b) all private limited companies having paid up share capital of rupees 20 crore or more; (c) all companies having paid up share capital of below threshold limit mentioned in (a) and (b) above, but having public borrowings from financial institutions, banks or public deposits of rupees 50 crores or more.
15.	Woman Director [Second Proviso to Section 149 (1)]	01.04.2014 Listed & Public	Needs immediate action.	One Director in the Board shall be woman. [Second Proviso to Section 149 (1)]. ➤ As per rule 3, every Listed and a Public company

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		Company		having Paid up capital 100 Cr. or more or T.O. 300 Cr. or more must appt women director. Note: Not applicable to a Private Company.
16.	Independent Directors (IDs) [Section 149 (4)] [Appoint within 1 year i.e. till 31.03.2015]	01.04.2014 Listed & Public Company	IDs to be appointed by shareholders for tenure of 5 years, as per Companies Act 2013. EGM may have to be convened. Applicable immediately on notification of relevant section unless specifically mentioned in notification. No grace period allowed in Act.	Listed Co.: At least 1/3rd of the total number of Directors to be appointed as IDs. Public Co.: At least 2 Directors to be appointed as IDs. As per Rule 4 of The Companies (Appointment and Qualification of directors) Rules, 2014, Public co. having: Paid Up capital—10 Crore Turnover—100 Crore O/s Loan, Deposit exceeding 50 Crore Note: Not applicable to a Private Company.
15.	EGM / Postal Ballot		To be complied with	(A) Section 180(1) already notified, which now needs shareholders approval through Special Resolution (previously such approval taken through ordinary resolution) for – (i) borrowings beyond share capital and free reserves (ii) to sell, lease or otherwise dispose of (including creation of charge thereon) of any undertaking(s) of the Company. (B) Appointment of independent Directors (please see point No.3). (C) Amendment of Articles of Association to incorporate the changes therein, brought by the Companies Act 2013.

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Disclaimer:

This write up is intended to start academic discussion on few significant interpretations under Companies Act, 2013. It is not intended to be a professional advice and should not be relied upon for real time professional facts. Readers are advised to refer relevant provision of law before applying or accepting any of the point mentioned above. Author accepts no responsibility whatsoever and will not be liable for any losses, claims or damages which may arise because of the contents of this write up.

I am very hopeful that this write up would be of some help to understand the concepts in new Companies Act, 2013.

Thanks

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