

Compliances under Companies Act 2013

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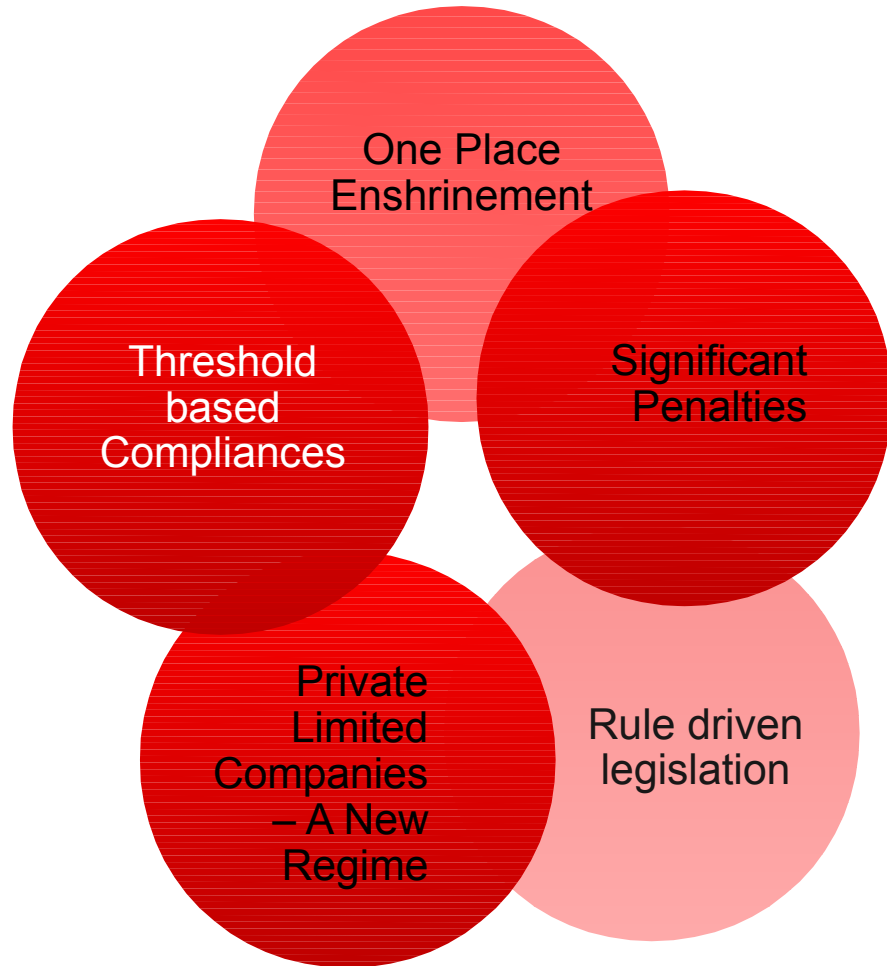
The Act

13 parts
658 sections
15 Schedules

29 Chapters
470 sections)
7 Schedules

All except 9 Sections are notified as of date, 39
Sections omitted with the introduction of
Insolvency and Bankruptcy Code and Repeal of
SICA

The New Rules of the Game



Companies Amendment Bill 2016 is proposed to be passed shortly and proposes several relaxations for private limited Companies

Sections Not Yet Notified

Section Ref	Section
Section 132	Constitution of National Financial Reporting Authority
Section 234	Merger or amalgamation of company with foreign company
Section 247	Valuation by registered valuers
Section 248	Power of Registrar to remove name of company from register of companies
Section 249	Restrictions on making application under section 248 in certain situations
Section 250	Effect of company notified as dissolved
Section 251	Fraudulent application for removal of name
Section 252	Appeal to Tribunal
Section 465	Repeal of certain enactments and savings

Key Compliances under Companies Act 2013

Key Compliances

1. Consolidated financial Statements are to be prepared where a company has subsidiaries and associates. Intermediary subsidiaries are exempted provided share holders of the parent have consented to the same.
2. Uniform Financial Year has been implemented for all Companies as April to March. Specific approvals for deviation can be obtained from NCLT for certain classes of Companies
3. No **extension of financial period** beyond 12 months is permitted unlike Sec 210 of the earlier Act

Key Compliances

4. As per Section 138 of the CA, 2013 and Rule 13 of Companies (Accounts) Rules, 2014, the following companies are required to appoint an **internal auditor** in a Board Meeting.

- Listed Companies ,
- Public – Pd up share capital > Rs 50 Crs, Turnover – Rs 200 Crs, Loans and Borrowings -> Rs 100 crs , outstanding deposits > Rs 25 crs
- Private –Turnover – Rs 200 Crs, Loans and Borrowings -> Rs 100 crs

Key Compliances

5. Audit Rotation : As per Section 139(2) read with Rule 5 and Rule 6 of Companies (Audit and Auditors) Rules, 2014, the following companies are required to rotate their auditors on expiry of the term:

Listed company;

- All unlisted public companies having paid up share capital of INR 10 Crores or more;
- All private limited companies having paid up share capital of INR 20 Crores or more;
- All companies having paid up share capital below the threshold limit mentioned in the aforesaid two points, but having public borrowings from financial institutions, banks or public deposits of INR 50 Crores or more

Key Compliances

6. Restricted Services : As per Section 144, an auditor shall not provide any of the following services:

- 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

Key Compliances

7. Fraud Reporting : The provisions on reporting fraud have been laid down under Section 143 (12) of the CA, 2013 and provides that if the 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 report the matter to the Central Government.

However, as per the Companies (Amendment) Act, 2015 as notified by MCA vide notification dated 14 December 2015, the auditor shall report only those matters to the Central Government which involves or is expected to involve individually an amount of INR One Crore or above.

Key Compliances

8. Secretarial Audit : As per Section 204(1) of CA, 2013 read with rule 9 of the Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014, the following companies are required to obtain Secretarial Audit Report:

- Every listed company;
- Every public company having a paid-up share capital of fifty crore rupees or more; or
- Every public company having a turnover of two hundred fifty crore rupees or more.

“Turnover” means the aggregate value of the realisation of amount made from the sale, supply or distribution of goods or on account of services rendered, or both, by the company during a financial year. [Section 2(91)]

Key Compliances

9. Deposit exemption for Private Companies - As per the exemption notification of the MCA dated 5 June 2015, a Private Company can accept deposits from its members to the **100% of its paid up share capital and free reserve** without complying with the provisions of Section 73(2)(a)(b)(c)(d)(e) and such company shall file details of monies so accepted in the manner as may be specified

10. As per the Companies (Acceptance of Deposits) Rules, 2014, trade advances more than 365 days will be treated as a deposit

11. As per the Companies (Acceptance of Deposits) Rules, 2014, share application money pending allotment for more than 60 days is treated as a deposit.

Deposits

12. In case deposit is taken from a person who is both a director and a member of the Company, will such receipt of money be treated as deposit or not? - Any amount received from a person who, at the time of the receipt of the amount, was a director of the company furnishes to the company at the time of giving the money, a declaration in writing to the effect that the amount is not being given out of funds acquired by him by borrowing or accepting loans or deposits from others, is not considered as deposit

Deposits

13. Loan from member : The Jun 6, 2015 notification. Sub-section (2) of section 73
Clauses a to e : Shall not apply to private companies having 50 or less number of members if they accept monies from their members not exceeding twenty five per cent of aggregate of the paid up capital and free reserves or one hundred per cent of the paid up capital, whichever is more, and which inform the details of such monies to the Registrar in the prescribed manner

Deposits

14. Loan from member, directors, directors relatives before March 31, 2015 :

MCA has issued a General Circular 5 / 2015 on March 30, 2015 the MCA has finally clarified that amounts received by Private Companies (prior to April 1, 2014) from **Members, Directors or their relatives prior received prior to April 1, 2014** need not be treated as deposits

provided that the same is disclosed in the notes to its financial statement for the financial year commencing on or after 1st April, 2014 the figure of such amounts and the accounting head in which such amounts have been shown in the financial statement

However amounts received after that date or renewed after that date of April 1, 2014 will be treated as per the Companies Act 2013 provisions

Key Compliances

15. Depreciation

- Change from rate based approach to useful life approach and the Act has specified useful lives for various classes of assets
- Schedule II rates are not the minimum rates and the company can adopt different useful lives based on technical advise
- Assets less than Rs 5000 need not be depreciated completely
- No rates for double and triple shift but extra depreciation of 50% and 100%
- Componentisation - If a part of an asset has **a separate useful life** independent of the parent, then a separate rate has to be applied for that part if that part is **material in relation to the asset**
- Assets which do not have a useful life as at the commencement of the Act are required to be written off completely. Such amounts may be debited to P& L or adjusted to General Reserves

Key Compliances

16. Directors Responsibility Statement

Report	All Companies	Listed Companies	New / Old
Directors had prepared accounts on a going concern basis	Yes	Yes	Old 217(2AA)
Applicable accounting standards have been followed and material departures disclosed	Yes	Yes	Old 217(2AA)
Selection and application of accounting policies to ensure prudence, true and fair	Yes	Yes	Old 217(2AA)
Adequate accounting records have been maintained for safeguarding assets and preventing frauds and irregularities	Yes	Yes	Old 217(2AA)
Proper systems to ensure compliance with the provisions of applicable laws and such systems were adequate and operating effectively	Yes	Yes	New
Directors have laid down internal financial controls which are adequate and operating effectively	Not Applicable	Yes	New

Key Compliances

17. Small Companies : The Act Prescribes a category of companies as Small Companies and provides for certain exemptions. This threshold is presently at Rs 50 lakhs of paid up share capital and Rs 2 Crores of Turnover. As per the proposed Companies Amendment Bill, 2016 which is yet to be notified, the limit of paid up capital and turnover is proposed to be increased to INR 10 Crores and INR 100 Crores respectively. holding company, subsidiary company, company registered under Section 8 or a company or body corporate governed by any special act will not be considered as a small company

Key Compliances

18. Key Managerial Personnel - The following companies, are required to appoint KMP and their appointment shall be intimated to the ROC in Form DIR 12 and the return of their appointment shall be filed in Form MR 1:

- Listed company;
- Public company having paid up share capital of INR 10 Crores or more

KMP includes: Chief Executive Officer or Managing Director or Manager; Company Secretary; Whole Time Director; Chief Financial Officer

19. Company Secretary All Companies with more than Rs 5 Crores paid up share capital shall have a Company Secretary

Key Compliances

20. Issue of shares at a discount : As per Section 53 of CA, 2013, no company shall issue shares at a discount other than issue of sweat equity shares. As per the proposed Companies Amendment Bill, 2016 which is yet to be notified, a company may issue shares at a discount to its creditors when its debt is converted into shares in pursuance of any statutory resolution plan or debt restructuring scheme in accordance with any guidelines or directions or regulations specified by the Reserve Bank of India under the Reserve Bank of India Act, 1934 or the Banking (Regulation) Act, 1949

Key Compliances

21. Private Placement : Provides for 50 or such higher number as per the Act. As per Section 42 of CA, 2013, a company can issue securities to such persons not exceeding fifty or such higher number as may be prescribed. As per Rule 14 of Companies (Prospectus and Allotment of Securities) Rules, 2014, the limit of number of persons has been extended to two hundred in a financial year.

22. Number of directors – 2 in private, 3 in public, 1 in OPC and maximum number not to exceed 15 unless by a Special resolution

23. Independent Directors : Compulsory for listed Companies and public companies having a paid up capital of > Rs 10 crores and turnover of more than Rs 100 Crores or more than Rs 50 crores of outstanding loans, debentures and deposits at any time during the year

Key Compliances

24. Audit Committee : Compulsory for listed Companies and public companies having a paid up capital of > Rs 10 crores and turnover of more than Rs 100 Crores or more than Rs 50 crores of outstanding loans, debentures and deposits at any time during the year. Majority shall be independent directors

25. Women directors : Compulsory for listed Companies and public companies having a paid up capital of > Rs 100 crores and turnover of more than Rs 300 Crores or more

26. Maximum number of directorships : No person shall hold office as a director, including any alternate directorship, in more than twenty companies at the same time: Provided that the maximum number of public companies in which a person can be appointed as a director shall not exceed ten. Deemed public companies shall be included in the above

Key Compliances

27. Sec 177, Vigil Mechanism is required to be adopted by the following companies:

- Every listed company;
- Companies which accept deposits from the public;
- Companies which have borrowed money from banks and public financial institutions in excess of fifty crore rupees.

28. Loans to Directors : Sec 185 relaxation. As per the notification dated 6 Jun 2015, the following private companies are exempted. A. No body corporate has invested in the share capital of the company; B. Borrowings from banks/financial institutions/any other body corporate is less than twice the paid up share capital of the company and fifty crores whichever is lower; and C. There is no subsisting default in repayment of existing borrowings at the time of the transaction.

Key Compliances

29. Frequency of Board : Every quarter, time limit not to exceed 120 days. As per the notification No. GSR 466 E dated 05 June 2015, in case of a Section 8 company, the Board of Directors of the Company shall hold at least one meeting within six calendar months

30. Audio – Video presence : The following matters shall not be considered through video conference or other audio visual means: Approval of annual financial statements; Approval of board's report; Approval of prospectus; Approval of the matter relating to amalgamation, merger, demerger, acquisition and takeover.

31. Interested director in a Private Limited Company : in case of a private limited company, as per notification No. GSR 464E dated 5 June 2015, an interested director can participate and vote in a board meeting after disclosing his interest in the particular transaction. The interested director, will be included for the purpose of determining the quorum of the meeting

Key Compliances

32. As per Section 179 of CA, 2013 read with Rule 8 the Companies (Meeting of Board and its Powers) Rules 2014, following powers of the Board can be exercised by means of a resolution passed at a duly convened Board meeting:

To make calls on shareholders in respect of money unpaid; To authorise buy-back of securities;
To issue securities, including debentures, whether in or outside India; To borrow monies;
To invest the funds of the company; To grant loans or give guarantee or provide security in respect of loans;
To approve financial statements and the Board's report; To diversify the business of the company;
To approve amalgamation, merger or reconstruction; To take over a company or acquire a controlling or substantial stake in another company;
To make political contributions; To appoint internal auditors and secretarial auditor;
To appoint or remove KMP;

As per the notification dated 5 June 2015, in case of a Section 8 Company, matters referred to in point no. (d), (e) and (f) may be decided by the Board by circulation instead of at a meeting

Key Compliances

33. Related Party Transactions : The following transactions are covered under Section 188 of the CA, 2013:

- Sale, purchase or supply of goods or materials;
- Sale or disposal of or buying of property of any kind;
- Leasing of property of any kind;
- Availing of or rendering any services;
- Appointment of an agent for purchase or sale of goods, materials, services or property;
- Related party's appointment to any office or place of profit in the company or its subsidiary or associate company;
- Underwriting of subscription of any securities or derivatives;

The following transactions do not require approval of the shareholders under Section 188:

Transactions in ordinary course of business; and on arm's length basis; and Transactions between holding company and wholly owned subsidiary company whose accounts are consolidated and laid before shareholders at Annual General Meeting

Key Compliances

Related Parties : The MCA vide General Circular No. 30/2014 dated 17 July 2014 has clarified that 'related party' referred to in the second proviso has to be construed with reference to the contract or arrangement for which the said special resolution is being passed. Thus, the term 'related party' in the above context refers only to such related party with whom the contract or arrangement is being proposed and for which the said special resolution is being passed.

The Companies (Amendment) Bill, 2016 which is yet to be notified, proposes to remove non-participation of related party shareholder of a public Company, in passing of the resolution of such public Company in which 90% or more members, in number, are relatives or promoters of related parties

Key Compliances

34. Sec 186 – Applicability to Private Companies

No company shall directly or indirectly —

(a) give any loan to any person or other body corporate;

(b) give any guarantee or provide security in connection with a loan to any other body corporate or person; and

(c) acquire by way of subscription, purchase or otherwise, the securities of any other body corporate,

exceeding sixty per cent. of its paid-up share capital, free reserves and securities premium account or one hundred per cent. of its free reserves and securities premium account, whichever is more.

Key Compliances

35. AGM cannot be held at a place situated outside the limit of city, town or village in which the Registered Office is situated. However, as per the proposed Companies Amendment Bill, 2016 which is yet to be notified, AGM of an unlisted company may be held at any place in India if consent is given in writing or by electronic mode by all the members in advance

36. Auditor presence is a must in the AGM (else authorised representative)

Corporate Social Responsibility

37. Whether provisions governing CSR are applicable to private Companies?

Yes, every company irrespective of Private or Public Limited having:

- net worth of INR 500 crores or more
- turnover of INR 1000 crores or more
- net profit of INR 5 crores or more

shall formulate a CSR Committee, who shall determine the CSR policy of the Company and every such company is required to spend of 2% of average net profits of the Company for last 3 years towards CSR.

Corporate Social Responsibility

38. Are there any implications of not spending the 2% of average net profits as CSR expenditure?

While it is not mandatory to spend the 2% of average net profits of the company as CSR expenditure, any shortfall is required to be disclosed in the Board report along with reasons thereof.