

**THE COMPANIES ACT, 2013- SIGNIFICANT CHANGES
IN RESPECT OF DIRECTORS, BOARD REPORT & BOARD MEETING**

1. Directors - Section 149 (Corresponding section 252, 253, 259)

- The maximum number of directors in Company has been increased from 12 to 15. More than 15 directors can be appointed by the Company by passing a special resolution. The limit of 15 directors is now applicable to private companies also.
- Appointment of one woman director has become mandatory for prescribed class of companies within specified time period. As per draft rules, prescribed class of companies are:
 - Every listed Company – within 1 year from its applicability.
 - Every other public Company having (a) paid-up share capital of Rs. 100 crore or more; or (b) turnover of Rs. 300 crore or more - within 3 years from its applicability.
- Transitional period of one year has been prescribed to comply with above two requirements i.e. restriction on no. of directors and appointment of woman director.
- As per the new provisions, out of all the directors, at least one director is required to stay in India for a total period of not less than 182 days in previous calendar year. Earlier there was no stipulation for any director staying in India.

2. Independent Directors (ID) - Section 149, 150 (Corresponding Section 252, 253, 259)

- Following companies shall have at least 1/3rd of the total number of directors as ID. The criteria (prescribed in draft rules) shall be applicable for 1st year and continue to be applicable even if the paid up share capital or turnover, or borrowings/deposits, falls below specified limits.
 - Public Companies having paid up share capital of Rs. 100 crore or more; or
 - Public companies having turnover of Rs. 300 crore or more; or
 - Public companies having outstanding loans or borrowings or debentures or deposits in aggregate exceeding Rs. 200 crore
- Transition period of 1 year has been provided for the appointment of ID's.
- Data Bank of ID's shall be maintained by a body/institute notified by the Central Government for facilitating appointment of ID's.
- Eligibility criteria's have been prescribed for ID's u/s 149 (6) and qualifications required for appointment of ID has been prescribed in the draft rules.

- ID shall not be entitled to any stock option but profit linked commission may be paid besides sitting fees as may be approved by the members. However, definition of ID prohibits pecuniary relationship with the Company. Hence there is a possibility of contradictory interpretation in respect of payment of profit linked commission.
- The IDs shall not hold office for more than 2 consecutive terms of 5 years and second term of appointment has to be approved by passing special resolution. ID shall be eligible for reappointment after expiry of 3 years provided he shall not be associated or appointed with the Company in any other capacity, either directly or indirectly. Eligibility criteria and qualification requirements may continue to apply in case of such re-appointment. Tenure of IDs before commencement of this Act shall not be counted for the purposes of counting 2 consecutive terms of five years.
- ID's not liable to retire by rotation & also excluded for computing 2/3rd of retiring directors.
- Performance appraisal of ID has to be done every year and ID has to comply with code of conduct prescribed in the Schedule IV of the Act.
- ID is responsible for the acts of omission / commission by Company with his knowledge, attributable through board process & with his consent/connivance/where not acted diligently.

3. Disqualifications for appointment of director – Section 164 (Corresponding Section 274)

Changes / additions to disqualification for appointment of directors are summarised below with comparison of existing provisions.

Sr. No.	Disqualifications under Companies Act 1956	Disqualifications under Companies Act 2013
1.	A person who has been convicted of any offence involving moral turpitude and sentenced in respect thereof to imprisonment for not less than 6 months is eligible for reappointment after period of 5 years has elapsed.	In addition to this disqualification, a person sentenced to imprisonment for a period of 7 years or more is not eligible for appointment in any Company. Further, offence can be involving moral turpitude or otherwise
2.	No provision	The person has been convicted of an offence while dealing with related party transactions u/s 188 at any time during the last preceding 5 years.
3.	Directors of public Companies are disqualified for appointment if the public company fails to file financial statements or annual return for any continuous period of 3 financial years or if the public	Now if the private companies has defaulted then the directors of private companies are also disqualified.

	company has defaulted in payment of public deposits, debentures and interest on the same or payment of declared dividend and default continues for one year or more. However, directors of Private Companies are excluded.	
4.	Order passed by the court or tribunal u/s 203 (power restrain fraudulent persons from managing companies) against a person then such person is disqualified for appointment as director.	Order passed by the court or tribunal under any Act against a person then such person is disqualified for appointment as director.

4. Number of directorships – Section 165 (Corresponding Section 275, 276, 277, 278, 279)

- Now a person cannot become director in more than 20 companies including private companies instead of 15 companies (excluding private companies) as per the existing provisions. Further out of these 20 companies, he cannot become a director in more than 10 public companies.
- Transitional period of 1 year has been provided to comply with these requirements.

5. Resignation of Director – Section 168 (New Provision)

- In case of resignation of director in any company, director has to give notice in writing to the Company. Company shall intimate the same to RoC and Board shall place the fact of resignation in the board’s report laid before the next general meeting.
- Director also has to intimate ROC along with detailed reasons for resignation within 30 days of resignation.

6. Small shareholders’ director – Section 151 (Corresponding Section 252)

- Listed companies may suo motu or upon notice of not less than five hundred or one-tenth of the total number of small shareholders, whichever is lower, elect small shareholders’ director from amongst small shareholders. Small shareholder means holding shares of nominal value of not more than Rs. 20,000 or such other sums as prescribed.
- Directors appointed by small shareholders’ are to be considered as independent director and are not liable to retire by rotation. Further, their tenure cannot exceed consecutive period of 3 years and on expiry of this tenure, they shall not be eligible for re-appointment.
- A person shall not be appointed as small shareholders’ director in more than 2 companies at the same time.

7. Duties of Directors - Section 166 (New Section)

- Duties of directors were not specifically prescribed under the Companies Act, 1956. They have now been specifically prescribed in the new act.
- Some of the duties covered are as under:
 - Director shall act in good faith in order to promote the objects of the Company.
 - Director shall exercise his duties with due and reasonable care, skill and diligence and shall exercise independent judgment.
 - Director shall not get involved in any situation where there is direct/indirect conflict of interest.
 - Director should not achieve or attempt to achieve any undue gain or advantage.
 - Director shall not assign his office.

8. Directors report - Section 134 (Corresponding Section 215, 216, 217)

- Directors report has to be prepared based on the standalone results of financial statements and performance and financial position of every subsidiary, associate company and joint venture is required to be mentioned.
- Some of the new information has been included in Directors report for all companies including private Company, which are as under (some of new items were already required to be given by listed companies):
 - Extract of annual return and number of meetings of the Board
 - Company's policy on directors appointment and remuneration
 - Particulars of loans, guarantees or investments and purpose for which loans or guarantee is proposed to be utilized by recipient
 - Particulars of contracts, arrangement with related parties
 - Material changes in events after balance sheet date
 - Development and implementation of risk management policy
 - Listed and other specified companies to specify manner of performance evaluation of board
 - Other information like change in the business/ KMP/ subsidiaries etc.
- Directors responsibility statement also has to include the following:
 - In case of public Company, fact that directors had laid down internal financial

controls and such internal financial controls are adequate and operating effectively.

- In case of all companies, that it has devised proper systems to ensure compliance with the provisions of all applicable laws and that such systems were adequate and operating effectively.
- Secretarial audit report also has to be annexed with directors report in case of
 - All listed companies
 - Public Company having paid up share capital of Rs.100 crore or more (as per draft rules)

9. Meeting of Board - Section 173 (Corresponding Section 285, 286)

- In case of board meeting, gap between 2 meetings should not exceed 120 days as against requirement of 1 meeting in each quarter specified under Companies Act, 1956. The requirement is similar to presently prescribed for listed companies.
- Relaxations has been provided to One Person Company, according to which:
 - If there is more than one director then one board meeting needs to be held in each of the half year and gap between two meetings should not be less than 90 days.
 - If there is only one director, then the Company is not required to hold the meeting.
- Directors are now allowed to attend Board meeting by way of video conferencing / audio-visual conferencing and such director will be counted for the purpose of quorum. Further, additional conditions specified includes:
 - Financial statements and Directors report cannot be approved by meeting which is through video conferencing or by the director attending through video conferencing
 - Directors have to attend at least one meeting during the year in person.
- Specific provision has been inserted which stipulates that 7 days' notice is required for holding the Board Meeting as against no provision for length of notice. Such notice can be in electronic form also. However, shorter period is allowed if at least one independent director is present at such meeting.

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This document has been prepared as a service to the clients. We recommend you to seek professional advice before taking any action on the specific issues.

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