

COMPANIES ACT 2013



Presented by :

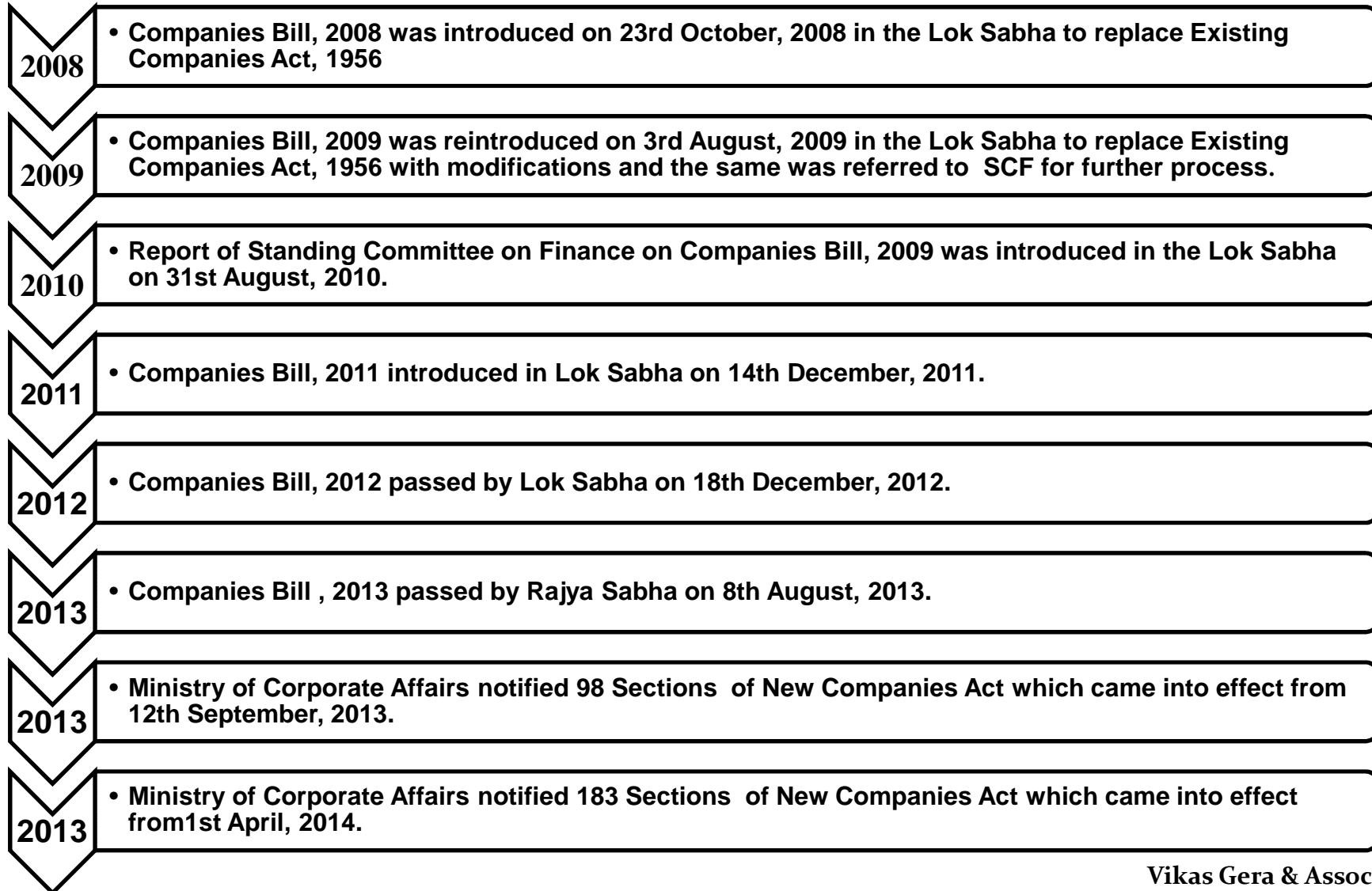
VIKAS GERA

Practicing Company Secretary

VIKAS GERA & ASSOCIATES

A Firm of Practicing Company Secretaries

Pathway to Companies Act 2013



Companies Act, 1956

Parts 13
(Chapters
26)

Sections 658

Schedules
15

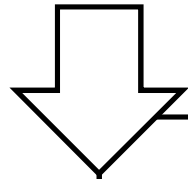
Companies Act, 2013

Chapters
29

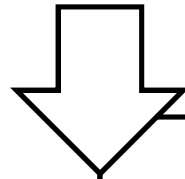
Sections 470

Schedules
7

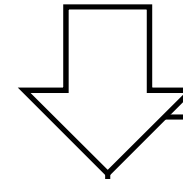
FEW NEW DEFINITIONS INTRODUCED IN SECTION 2



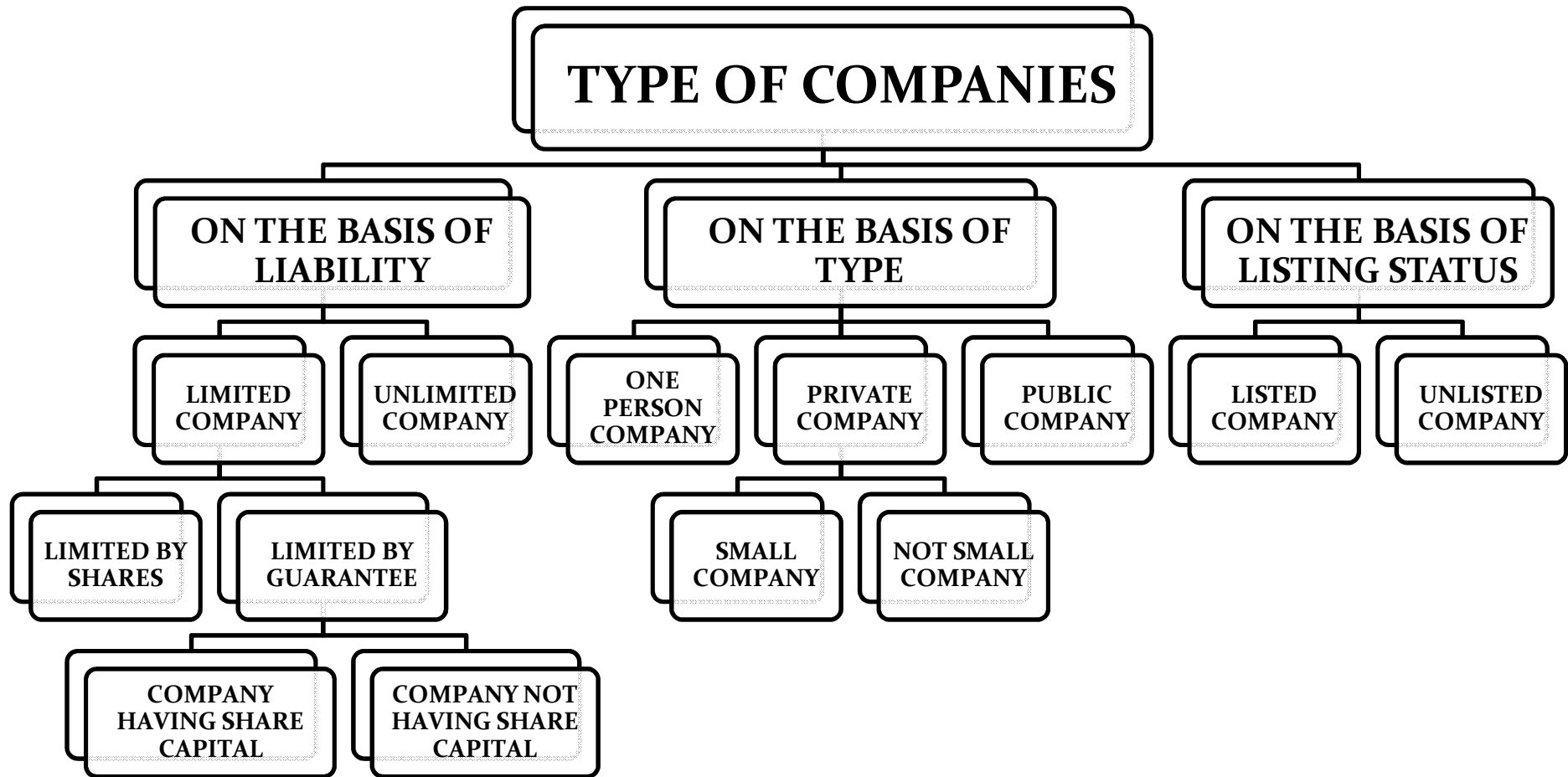
- Accounting Standards
- Associate Company
- Auditing Standard
- Authorized Capital
- Books of Accounts
- Called up capital
- Charge
- Chartered Accountant
- Chief Executive Officer
- Chief financial Officer



- Independent Director
- key Managerial Personnel
- One Person Company
- Related Party
- Small Company
- Serious Fraud Investigation Office
- Remuneration
- Ordinary or Special Resolution
- Interested director



- Whole Time Director
- Voting Right
- Unlimited Company
- Turnover
- Sweat Equity Shares
- Subscribed Capital
- Register of Companies
- Public Financial Institutions
- Promoter
- Postal Ballot



ONE PERSON COMPANY



Definition

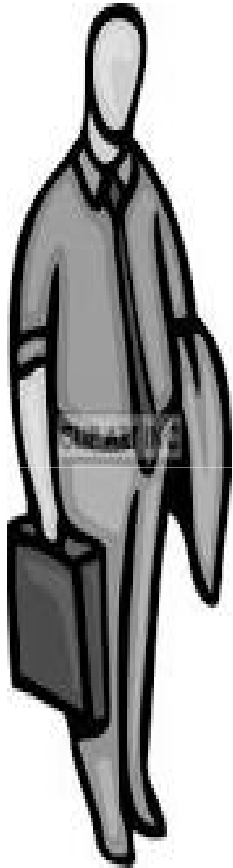
- “One Person Company” means a company which has one person as member.

Incorporation

- Will be formed as a private company.
- Name of nominee who will continue in event of death to be specified.
- Words “One Person Company” to be mentioned below the name of the Company.

Meetings

- No AGM required.
- No Board Meetings required in case of only one director.
- Entering resolutions in minutes book is sufficient.
- Minutes to be signed and dated.



Director

- Minimum 1 Director required.

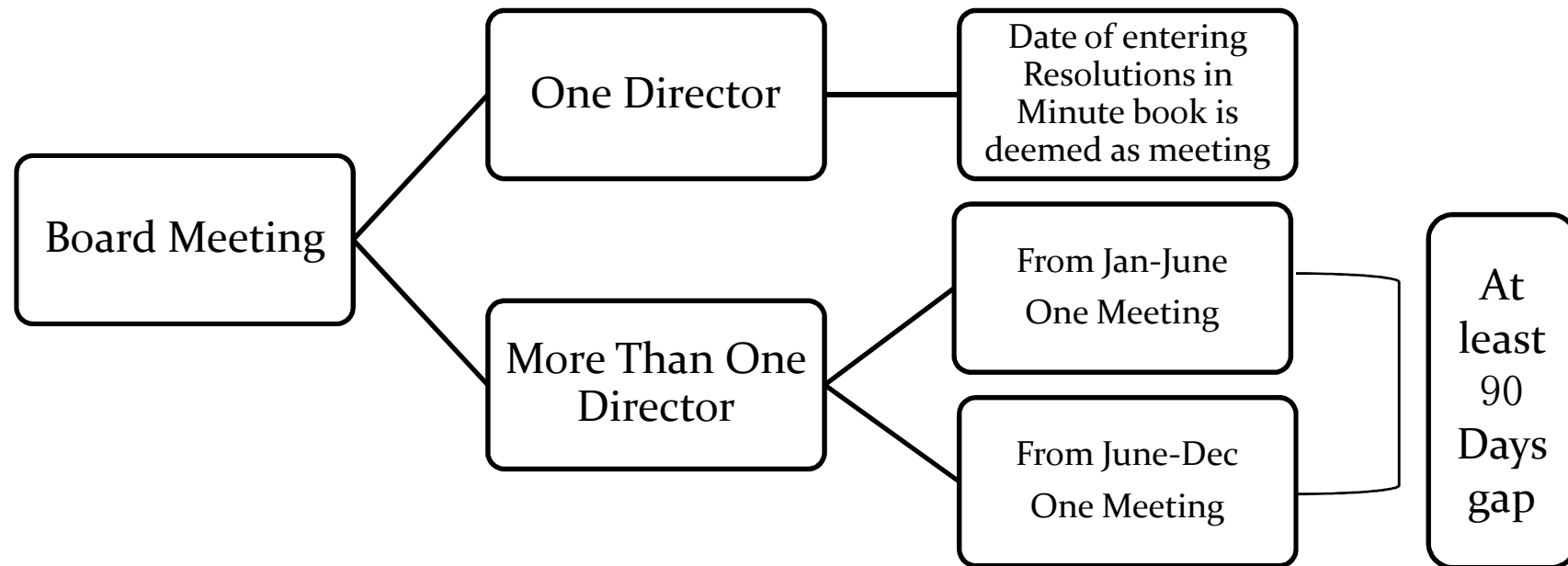
Accounts

- Financial Statements may not include cash flow statement.
- Accounts to be filed within 180 days of FY.
- Board's Report to contain only response to auditor's qualification.

Signing

- Financial Statements can be signed by one director alone.
- Annual Return to be signed by CS, if appointed, else by one director.

Board Meeting Provisions for OPC



SMALL COMPANY

Definition

- “small company” means a company, other than a public company, —
- **PAID-UP SHARE CAPITAL** : 50 Lakh to 5 Crore;
OR
- **TURNOVER** : 2 Crore to 20 Crore (as per its last profit and loss account)

Provided that nothing in this clause shall apply to—

- A Holding company or a Subsidiary company;
- A company registered under section 8; or
- A company or body corporate governed by any special Act;

Accounts

- The Financial Statement ,with respect to small company may not include the Cash Flow Statement.

Signing of Annual Return

- CS , if No CS then by the Director.

Board Meeting

- Jan-June - One Meeting
 - June-Dec - One Meeting
- } At least 90days Gap

INCORPORATION-COMPARISON

Basis for Comparison	Provision contained in existing Companies Act, 1956	Provision contained in Companies Act, 2013
Maximum number of members for private companies	50 (Fifty)	200 (Two Hundred)
Object Clause of MOA	Object clause bifurcated into – -Main Objects, -Incidental Objects -Other Objects.	MOA to contain : - Main Objects, -Incidental Objects.
Commencement of Business	Applicable only to Public Limited Companies	Applicable to all Companies. (Public & Private Both)

Basis for Comparison	Provision contained in existing Companies Act, 1956	Provision contained in Companies Act, 2013
Registered Office	Form 18 is to be filed with the office of ROC at the time of incorporation.	Form INC 22 is to be filed with the Office of ROC at the time of its incorporation.
Change of Registered Office	Any Change in the situation of Registered Office is to be intimated to registrar within 30 Days of the change.	Any Change in the situation of Registered Office is to be intimated to the Registrar within 15 Days of the change.

Basis for Comparison	Provision contained in existing Companies Act, 1956	Provision contained in Companies Act, 2013
Articles of Association	No concept of Entrenchment Provisions.	AOA of the company may contain Entrenchment Provisions.
Forms	<p>Form 1A : Application form for availability of Name.</p> <p>Form 1 : Application and Declaration for Incorporation of a company.</p> <p>Form 18 : Notice of situation of Registered Office.</p> <p>Form 32: Particulars of Appointment of Directors.</p> <p>Form 19 , 20 : Application for commencement of business (in case of Public company).</p>	<p>Form INC 1 : Application for Reservation of name.</p> <p>Form INC 7 : Incorporation of Company (other than OPC).</p> <p>Form INC 22 : Notice of situation of Registered Office.</p> <p>Form DIR 12 : Particulars of Appointment of Directors and KMP.</p> <p>Form INC 21 : Application for commencement of business.</p>

Significant changes in Companies Act, 1956 and Companies Act, 2013

DEFINITION OF PRIVATE COMPANY

• COMPANIES ACT, 1956

- Maximum number of members restricted to 50
- Express clause in the definition “prohibits any invitation or acceptance of deposits from persons other than its members, directors or their Relatives” [Section 3(1)(iii)]

• COMPANIES ACT, 2013

- Maximum Number of members restricted to 200
- No specific clause on prohibition of acceptance of deposits is there in the definition. [Section 2(68)]
- Now Company can accept Deposit from its members subject to fulfillment of conditions laid down in Sec 73 i.e. Prohibition of Acceptance of Deposits from Public.

REPAYMENT OF DEPOSIT ACCEPTED

- In case of Deposit accepted before the commencement of this Act and it is unpaid **THEN** Company is required to undertake the following steps :

Step 1

**Company will intimate the ROC within 3 Months
in specified FORM regarding all deposit
remaining unpaid and arrangement made for
such repayment**

Step 2

**Repayment of deposit along with interest within
1 year from the date of commencement of the act
or
due date of repayment, whichever is earlier.**

FAILURE TO REPAY THE DEPOSIT

- **Penalty on COMPANY**
1 Crore to 10 Crore .

AND

- **Penalty on OFFICER IN DEFAULT**
Imprisonment up to 7 Years

OR

25 Lakh to 2 Crore

OR

Both.

DIRECTORS



RESIDENT DIRECTOR

A Director who has stayed in India for a minimum period of **182** days during the **previous calendar year**.

Companies Act, 1956

- No requirement to have any director resident in India.

Companies Act, 2013

- All companies, including private companies, must have at least 1 director .[**Section 149(3)**]

CONSENT TO ACT AS DIRECTOR



Companies Act, 1956

- Private Companies - Consent not mandatory to be filed with the ROC. [**Section 264**]

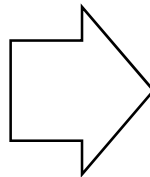
Companies Act, 2013

- Consent is mandatory for all Companies. [**Section 152**]
- Consent of Director is in the specified format i.e. Form DIR 2
- DIR 2 must be filed with DIR 12 within 30 Days with the ROC.

LIMIT ON NUMBER OF DIRECTORSHIP

COMPANIES ACT, 1956

**A Person can hold the Directorship in not more 15 Companies.
(Section 275)**



COMPANIES ACT, 2013

A person can act as director in a maximum of 20 companies at any given point of time out of which not more than 10 should be public companies.[Section 165]

MAXIMUM LIMIT OF DIRECTORS

COMPANIES ACT, 1956

Maximum limit of Directors was 12 and more Directors can be added by obtaining Central Government Approval.

COMPANIES ACT, 2013

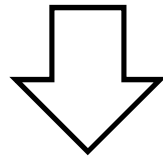
Maximum Limit of Directors is 15 and more directors can be added by passing Special Resolution.

VACATION OF OFFICE OF DIRECTOR

<u>COMPANIES ACT, 1956</u>	<u>COMPANIES ACT, 2013</u>
<p>The office of a director shall become Vacant if he absents himself from <u>3 Consecutive Board Meetings</u></p> <p style="text-align: center;">OR</p> <p><u>From all meetings</u> of the Board, for a continuous period of 3 months, whichever is longer, <u>without</u> obtaining leave of absence from the Board.</p>	<p>The office of a director shall become Vacant in case—</p> <p>he absents himself from <u>all the meetings</u> of the Board of Directors held during a period of 12 months <u>with or without</u> seeking leave of absence of the Board.</p>

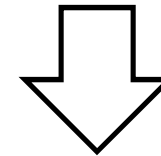
INDEPENDENT DIRECTOR

APPLICABILITY



**ALL LISTED
COMPANIES**

Minimum 1/3rd



CLASS OF COMPANIES

Public Company

- Paid up Share Capital ≥ 10 Cr
- OR
- Turnover ≥ 100 Cr
- OR
- Loan outstanding > 50 Cr

Minimum 2

INDEPENDENT DIRECTOR

- Any **FRACTION** contained in such $1/3^{\text{rd}}$ number shall be rounded off as one.
- Independent Director to give **DECLARATION** of its Independence every year.
- **Alternate director** to Independent director should also satisfy criteria of independence.
- An Independent Director shall not be entitled to any **REMUNERATION** other than Sitting Fee, Reimbursement of Expenses for participation in the board and other meetings and Profit Related Commission as may be approved by the members.

INDEPENDENT DIRECTOR

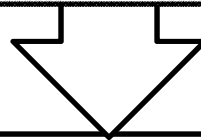
TENURE

- To be appointed for a period of 5 years.
- Can be Reappointed for another period of 5 years by passing **SPECIAL RESOLUTION** and disclosure in board's report.
- After 2 Consecutive terms of 5 years, 3 years cooling off period to be observed.

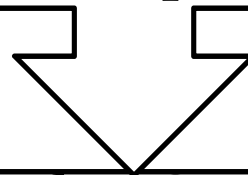
SELECTION OF INDEPENDENT DIRECTOR

**RULE 6 of Companies (Appointment and Qualification of Directors)
Rules, 2014.**

Creation and Maintenance of databank of persons offering to become Independent Directors.



Any body, institute or association (hereinafter to be referred as “the agency”), which has been authorized in this behalf by the Central Government shall create and **maintain a data bank of persons willing and eligible to be appointed as independent director.**



Placement of Such Data Bank : On ministry website or any other website as may be approved or notified by the Central Government.

Inclusion of Name in Data Bank :Any person can get his name included in the Data bank by Filling **Form DIR-1**.

LOAN TO DIRECTORS

Basis	Section 295 of Companies Act, 1956	Section 185 of Companies Act, 2013	Impact of the change
Applicability	-Public Companies - Private Companies (Subsidiary of any Public Company)	-Public Companies -Private Companies	Exemption available to Private Companies has been removed
Transactions	RESTRICTED -Advancing of any loan - Giving of guarantee/ providing of security in connection with loan.	PROHIBITED -Advancing of any loan, including any loan represented by a book debt. -Giving of guarantee/ providing of security in connection with loan.	Under Section 185 loan includes, book debts also.

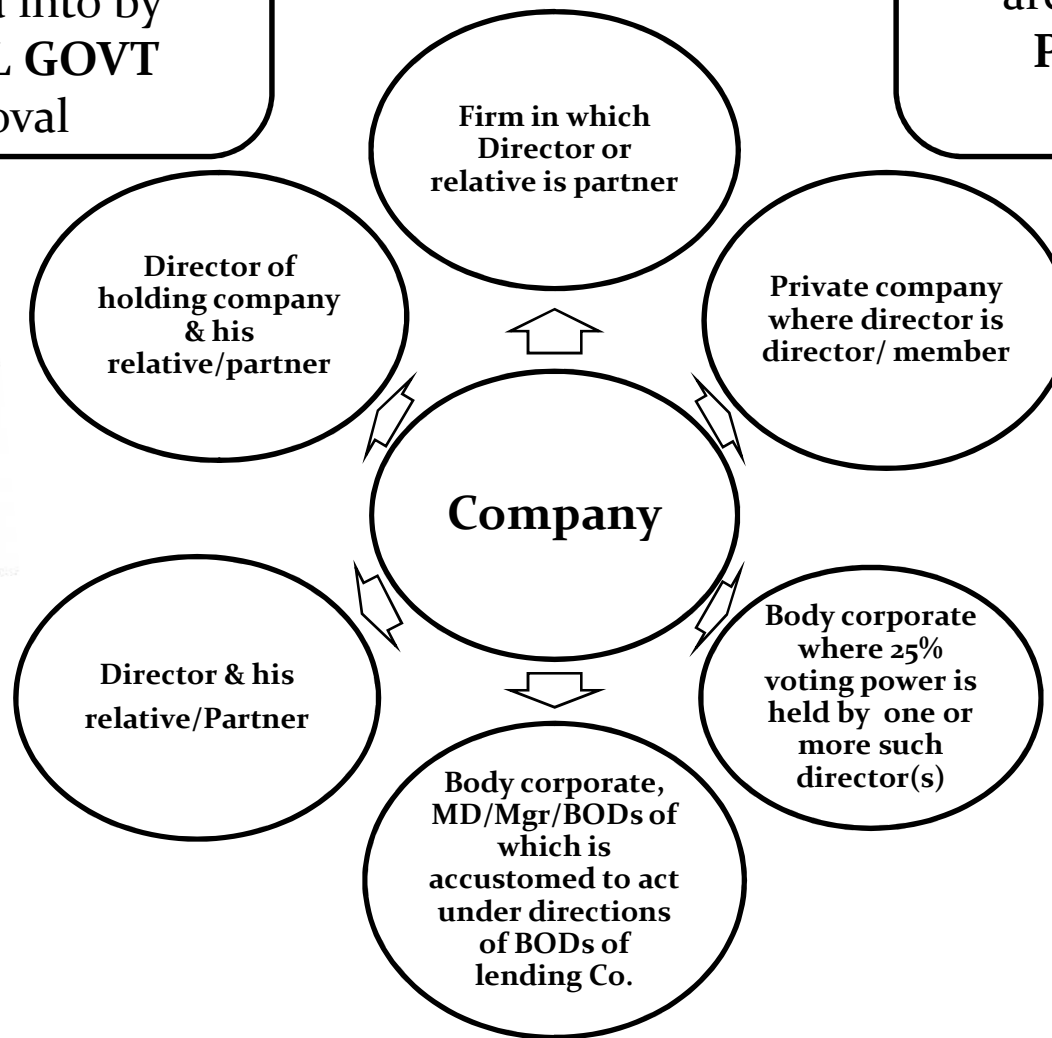
Companies Act, 1956

Transactions with these
are **RESTRICTED** & can
be entered into by
CENTRAL GOVT
Approval



Companies Act, 2013

Transactions with these
are **ABSOLUTELY**
PROHIBITED.



Basis	Section 295 of Companies Act, 1956	Section 185 of Companies Act, 2013
Exemption	<p>1) Loan made/ guarantee given/ security made by Holding to its Subsidiary.</p> <p>2) Loan made/ guarantee given/ security provided by a Company whose main Business is to Give Loan for its due Re-Payment.</p>	<p>1) New exemptions have been introduced by virtue of which loans can be granted to MDs or WTDs by seeking members' approval by means of <u>special resolution</u> OR as part of condition of service <u>extended to all employees.</u></p> <p>2) Loan made/ guarantee given/ security provided by a Company whose main Business is to Give Loan for its due Re-Payment.</p>

Basis	Section 295 of Companies Act, 1956	Section 185 of Companies Act, 2013
Penalty	<p>On company : NIL</p> <p>Officer in Default : Rupees 5000/- OR maximum imprisonment 6 months.</p> <p>(If repaid in Full- No imprisonment)</p> <p>(If repaid in Part- Imprisonment Proportional reduced)</p>	<p>On company : 5 lakh to 25 lakh Rupees</p> <p>Officer in Default : 5 lakh to 25 lakh Rupees OR maximum imprisonment 6 months.</p> <p>Provision regarding the following has been removed:</p> <p>No imprisonment in case of full repayment of loan or Reduction in imprisonment for partial repayment of loan.</p>

CONCEPT OF WOMEN DIRECTOR

- Specific class or classes of company to have at least one **WOMAN DIRECTOR**.
- As per Chapter XI Rules, the following class of companies shall appoint at least 1 Women Director:
 - Every Listed company
 - Every Other Public company having
 - a) PAID-UP SHARE CAPITAL \geq 100 Crore;
OR
 - b) TURNOVER \geq 300 Crore.

(As per last date of latest audited financial statement)



BOARD MEETINGS

Basis	Provision contained in existing Companies Act, 1956	Provision contained in Companies Act, 2013
First Board Meeting	No specific time stipulated for holding first board meeting.	Every company shall hold the first meeting of the Board of Directors within 30 days of the date of its incorporation.
Time Gap between two	At least 1 meeting to be held in every quarter.	Not more than 120 days shall intervene meetings between two consecutive meetings of the Board.

Basis	Provision contained in existing Companies Act, 1956	Provision contained in Companies Act, 2013
Length of Notice	No specific length of notice specified.	Meeting of the Board shall be called by giving not less than 7 days' notice.
Quorum of Board Meeting	2 Directors OR 1/3 rd of the Board (whichever is Higher)	Same as earlier
Penalty	Every officer in default of the company. Fine up to Rs 1000/-	Every officer in default of the company. Fine up to Rs 25000/-

ANNUAL GENERAL MEETINGS

Basis	Provision contained in existing Companies Act, 1956	Provision contained in Companies Act, 2013
Maximum time for holding first AGM	18 months from incorporation or 9 months from closure of accounts, whichever is earlier.	<u>9 Months</u> from closure of accounts.
Time and Day	<p>TIME : During business hours.</p> <p>DAY : On a day which is <u>not a public holiday</u>.</p>	<p>TIME : During business hours i.e. 9 A.M. to 6 P.M.</p> <p>DAY : On any day which is <u>not a National Holiday</u>.</p>

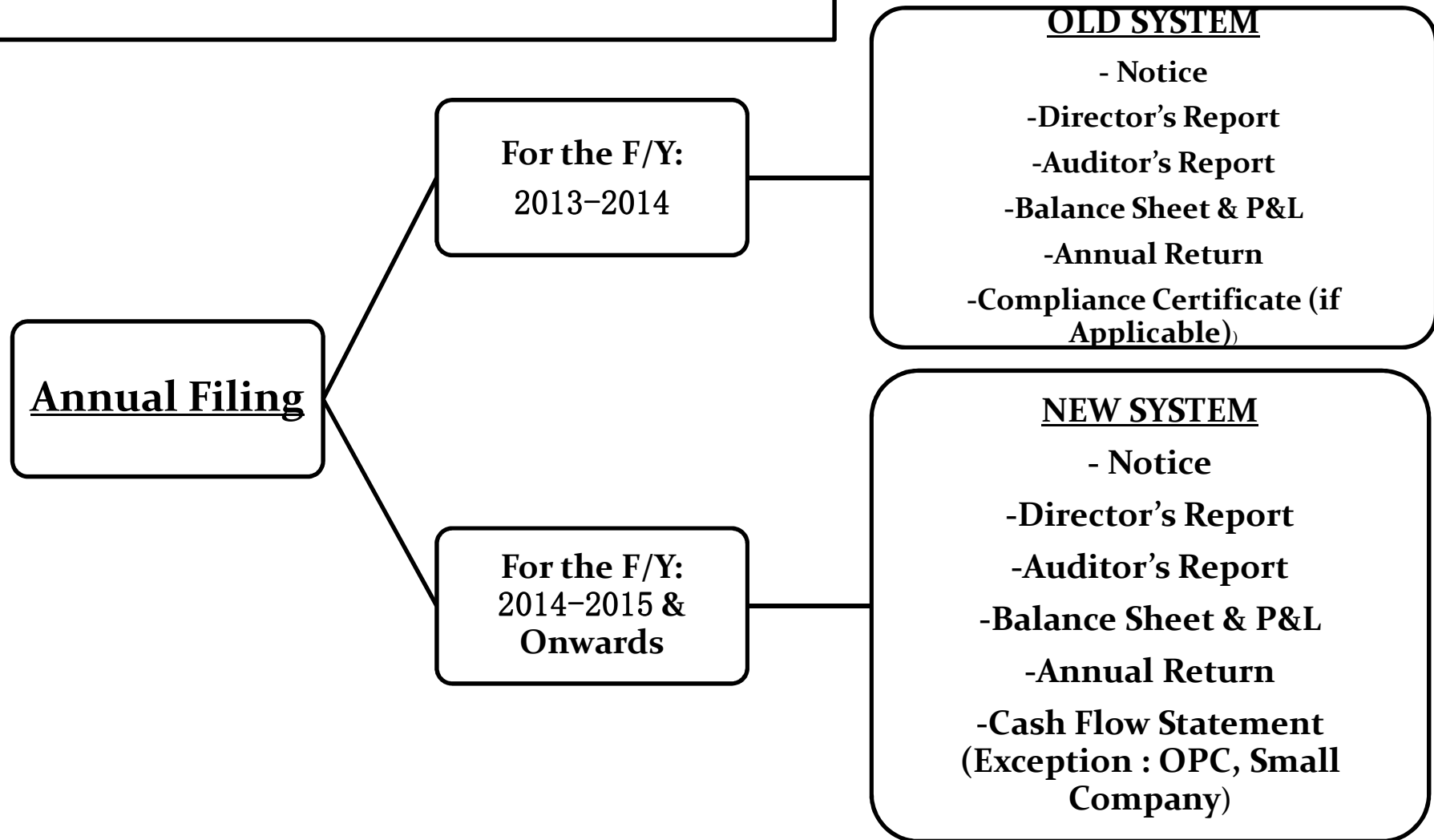
Basis	Provision contained in existing Companies Act, 1956	Provision contained in Companies Act, 2013
Length and Mode of Notice	<p>21 Clear Days Notice.</p> <p>Written Notice mandatory.</p>	<p>21 days clear notice to be given by all companies.</p> <p>Notice may be given in <u>Writing or in Electronic</u> form in the manner prescribed.</p>
Consent for Shorter Notice	Consent to be given by <u>all members</u> entitled to vote at the meeting.	Consent to be given by <u>at least 95%</u> of the members entitled to vote at the meeting.

Basis	Provision contained in existing Companies Act, 1956	Provision contained in Companies Act, 2013
Quorum	Private Companies – 2 Members	Private Companies – 2 Members
	Public Companies – 5 Members	Public Companies
		<u>Total member</u> <u>Members</u>
		Till 1000 5
		1001–5000 15
		5001 and Above 30
Penalty	Company, and every officer in default,	Company and every officer in default
	fine up to Rs. 50,000/-	fine up to Rs. 1,00,000/-
	and	and
	Continuing default Rs. 2,500/- for every day.	Continuing default Rs. 5,000/- for every day.

STATUTORY MEETING

Basis	Provision contained in existing Companies Act, 1956	Provision contained in Companies Act, 2013
Statutory Meeting	Every Public limited company to hold statutory meeting after one month but before 6 months from the date of entitlement to commence business and file statutory report with ROC.	No similar provision is there in the new Act.

ANNUAL FILING



SIGNING PROVISIONS

DOCUMENTS	COMPANIES ACT, 1956	COMPANIES ACT, 2013
Balance Sheet and Profit & Loss	-Minimum 2 Directors (1 MD ,if there is One) & -Manager/CS, (if Any)	-Chairman ,If Authorized by BOD OR -Minimum 2 Directors (MD ,If there is One) & -CEO (If he is a director) & -CFO (If Appointed) & -CS (If Appointed)
Director's report	-Chairman (If Authorized by Board) OR - 2 Directors	Same as Above

Annual Return	<p> -2 Directors (1 MD ,if there is One) & - Manager/CS, (if Any) </p> <p> & -<u>In case of Listed Company :</u> It is mandatory to be signed by PCS. </p>	<p> -1 Director & -CS (If there is No CS , then by PCS) </p> <p> & -<u>In case of Listed Company :</u> It is mandatory to be signed by PCS. </p>
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SHARE CERTIFICATES

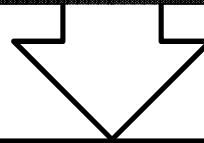
Companies Act, 1956

Companies Act, 2013

To Subscribers

No specific time limit prescribed.

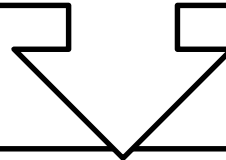
Share Certificates to be issued within 2 months of incorporation.



On Allotment of Shares

Within 3 months from date of allotment.

Within 2 months from date of allotment.



On Transfer/Transmission of Shares

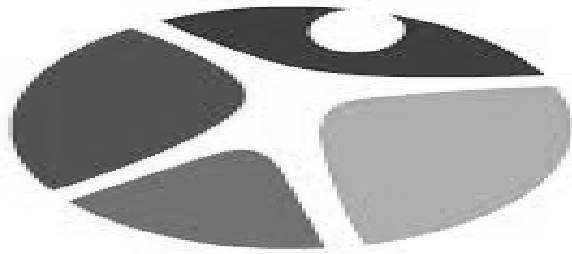
2 months from date of lodgment of instrument of transfer/transmission.

1 month from date of lodgment of instrument of transfer/transmission.

CHARGES

Basis	Companies Act, 1956	Companies Act, 2013
Governing Section	125	77
Registration of Creation/Modification Charge	<u>Form 8</u> needs to be filled with the ROC within 30 days	<u>Form CHG-1</u> needs to be filled with the ROC within 30 days
Extension	<u>ROC</u> :may allow further 30Days extension on payment of Additional Fees i.e. up to 10 Times.	<u>ROC</u> : may allow further 270 Days extension on payment of Additional Fees.
Satisfaction of Charge	Form 17 needs to be filled with the ROC within 30 days (Section- 138)	Form CHG-4 needs to be filled with the ROC within 30 days. (Section 82).

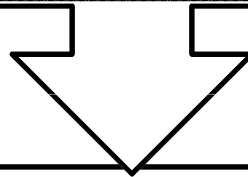




Corporate Social Responsibility

COMPANIES ACT, 2013

Section 135: Corporate Social Responsibility



APPLICABILITY

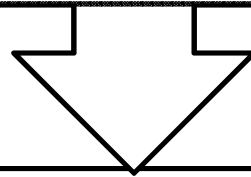
Every company having :

- a) Net worth of **500 Crore** or more; or
- b) Turnover of **1000 Crore** or more; or
- c) Net profit of **5 Crore** or more

During any Financial year

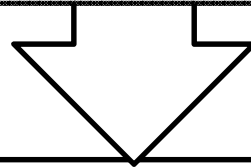
CSR COMMITTEE

Minimum 3 directors including 1 Independent Director.



CSR SPENDING

Minimum 2% of the average net profits of the company made during the 3 immediately preceding Financial Years .



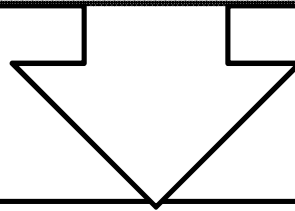
SCHEDULE VII- SOME ACTIVITIES FOR CSR SPENDING ARE:-

- Promotion of education.**
- Promoting gender equality and empowering women.**
- Contribution to the Prime Minister's National Relief Fund etc.**



PREFERENCE FOR SPENDING

The company is required to give preference to local area and areas where it operates for spending the amount earmarked for CSR.



FAILURE TO SPEND

BOD is required to specify the **reasons** for not spending the amount **in the Director's report**.

SECRETARIAL AUDIT (SECTION 204)

Eligibility Criteria

Every listed company &

A Company

- i) having paid-up capital of Rs. 50 Crore or more.**
- or**
- ii) having turnover of Rs. 250 Crore or more**

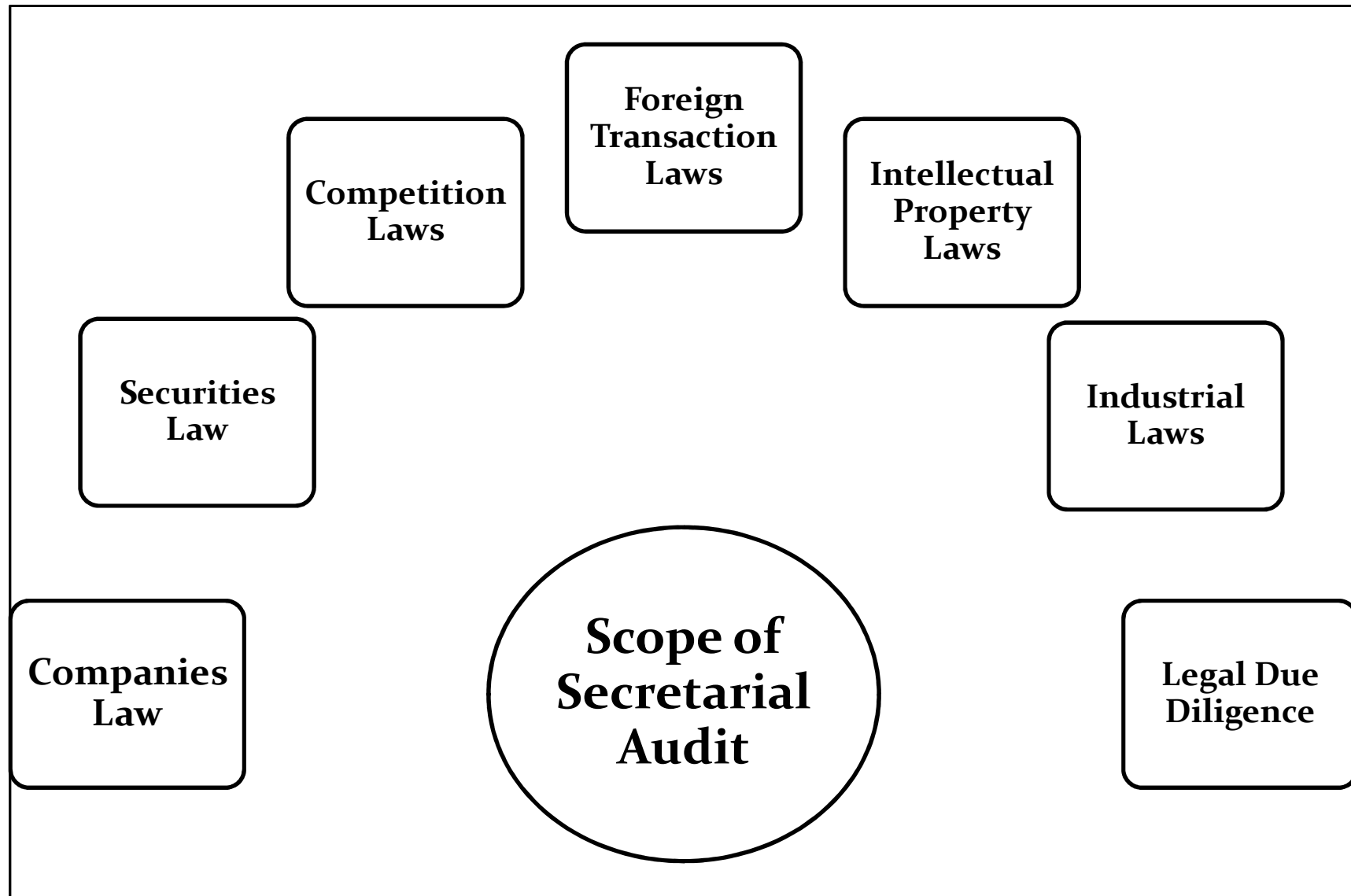
Disclosure of Secretarial Audit Report

Board's report contain a Secretarial Audit Report given by a Company Secretary in practice

Penalty for Non-Compliance

Company/any Officer or PCS , who is in Default, shall be punishable with fine of Rs. 1Lakh- 5 Lakh

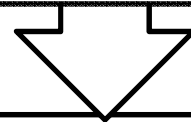
FORMAT OF SECRETARIAL AUDIT – FORM NO. MR 3



COMPOUNDING OF OFFENCES

COMPOUNDABLE OFFENCES

Any offence punishable with fine only



AUTHORITY

Companies Act, 1956

Penalty up to 50,000 - RD

Penalty > 50,000 - CLB

Companies Act, 2013

Penalty up to 5,00,000 - RD

Penalty > 5,00,000 - Tribunal



PENALTY

Any officer or other employee of the Company who fails to comply with any order of the above authority shall be punishable with:


- Imprisonment up to 6 months OR

- Fine up to 1 Lakh OR

- Both

KEY MANAGERIAL PERSONNEL

Heading	Content
Definition [Section 2(51)]	“Key Managerial Personnel” , in relation to a company means the following:- a) MD/CEO/Manager and in their absence Whole time Director. b) CS c) CFO
Applicability	1) Every listed company & 2) Every other public company having a -Paid-Up Share Capital >= 10 Crore
Manner of Appointment	BOARD RESOLUTION
Maximum Limit	Not more than One Company Except in its Subsidiary

Heading	Content
Filling of Vacancy 	Within a Period of <u>6 months</u> from the date of such vacancy
Penalty	<p style="text-align: center;"> <u>On Company:</u> 1 Lakh to 5 Lakh </p> <p style="text-align: center;"> <u>On Every Director & KMP:</u> Maximum. Rs.50, 000/- + Rs.1000/- per day (for Continuous Default) </p>

AUDITOR

Appointment of First Auditor

- Auditor to be appointed within 30 days of registration of the Company in a Board Meeting.
- In case the BOD fails to do so, it shall inform the members of the Company and then the members shall appoint the auditor within 90 days at an EGM.
- 1st Auditor shall hold office till the Conclusion of 1st AGM.



Manner of Appointment of Subsequent Auditor

Before Appointment Written Consent and Certificate shall be obtained from the Auditor

Appointment of Auditor at the AGM by Members.

Auditor shall hold the office from Conclusion of 1st AGM till the Conclusion of 6th AGM.

Ratification of such appointment done by members at every AGM.

Auditor & ROC shall be intimated of such appointment within 15 days of AGM.

Appointment of Auditor in case of LISTED & OTHER CLASS OF COMPANIES

- ❑ All Listed Companies
- ❑ All Unlisted Public Companies having paid up share capital \geq 10 Crore
- ❑ All Private Companies having paid up share capital \geq 20 Crore
- ❑ All Companies having paid up share capital below the threshold limit mentioned above **BUT** have public borrowings \geq 50 Crore

- Tenure of Individual Auditor – One Term of 5 Consecutive Years.
- Tenure of Audit Firm – Two Term of 5 Consecutive Years.

- **Cooling off Period** of 5 Years after the expiry of tenure.

EXCEPTION – All OPC, Small Companies, Unlisted Public Company having Paid up share capital $<$ 10 Crore, Private companies having Paid up share capital $<$ 20 Crore and All Companies having paid up share capital below the threshold limit mentioned above **BUT** have public borrowings $<$ 50 Crore .
(**NO COOLING OFF PERIOD**)

FEES STRUCTURE

For <u>submitting</u> , <u>filing</u> , <u>registering</u> or <u>recording</u> any document , <u>any fact</u> by this Act required or authorized to be submitted, filed, registered or recorded	Amount (in Rs)
(a) in respect of a company having a nominal share capital of up to 1,00,000.	200/-
(b) in respect of a company having a nominal share capital of Rs. 1,00,000 or more but less than Rs.5,00,000.	300/-
(c) in respect of a company having a nominal share capital of Rs. 5,00,000 or more but less than Rs.25,00,000	400/-
(d) in respect of a company having a nominal share capital of Rs.25,00,000 or more but less than Rs.1 crore .	500/-
(e) in respect of a company having a nominal share capital of Rs. 1 crore or more.	600/-

<u>Additional fees shall be applicable for delays in filing of the forms other than for increase in Nominal Share Capital</u>	Amount (in Rs.)
Period of delays	Forms including charge documents
Upto 15 days (sections 93,139 and 157)	1 time of normal filing fees
More than 15 days and up to 30 days (Sections 93, 139 and 157) and up to 30 days in remaining forms.	2 times of normal filing fees
More than 30 days and upto 60 days	4 times of normal filing fees
More than 60 days and upto 90 days	6 times of normal filing fees
More than 90 days and up to 180 days	10 times of normal filing fees
More than 180 days and up to 270 days	12 times of normal filing fees

QUICK BITES

- Financial year to end on 31st March every year for all companies.
- Existing Company to Comply with this provision within 2 years.

➤ Financials statements to include :

- Balance Sheet
- Profit & Loss
- Cash Flow Statement.

- Existing Companies to comply with the Provision relating to appointment of Auditor within 3 Years from the date of Commencement of the Act.

- Resolution passed u/s 293 of the Companies Act, 1956 are Valid for 1 Year effective from 12th September, 2013.

➤ **MOA & AOA needs to be altered in tune with Companies Act, 2013.**

➤ **New Forms will be available on MCA website i.e. www.mca.gov.in from 28th April, 2014.**

➤ **Existing Companies have to comply with the provisions relating to the Composition of the Board in tune with Companies Act, 2013 within 1 Year from the date of commencement of this Act.**

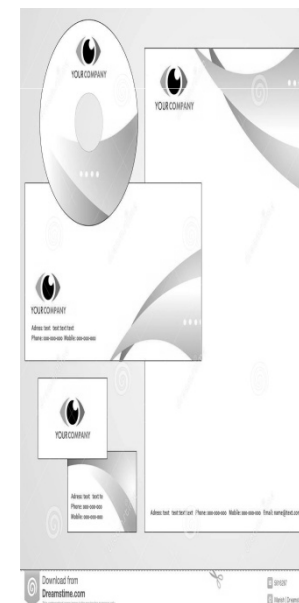
➤ **Annual return is to be prepared as on 31st March (i.e. End of Financial Year)**



CHANGES IN THE OFFICIAL PUBLICATIONS

- **As Per section 12 (3)(c) of the Companies Act, 2013** the Following must be reflected in all the Billheads, Business Letters, Notices and other Official Publications :

- Name of Company
- Address of its registered Office
- Corporate Identification Number
- Telephone number, Fax number
- E-mail Id
- Website Address, if Any.



NEWS

Bookkeepers Reluctant to Turn the Page with Changes in Cos Law

Chartered accountants, cost accountants and company secretaries object to notification of Companies Act pointing to stricter accountability norms and perceived job losses

ANURADHA HIMATSINGKA, NAMKRISHNA KASHELKAR & SHUBHAM Bhatra
KOLKATA | MUMBAI | NEW DELHI

Chartered accountants, cost accountants and company secretaries—three classes of professionals recognized under the statute—have protested against the notification of the new companies law, with each saying that they will be hurt by it in various ways.

While chartered accountants are worried about increased responsibility and accountability under the new Act, cost accountants and company secretaries say they will be rendered superfluous at more than 90% of companies, putting corporate governance at risk. However, others are of the view that the new rules will lead to the opening up of fresh opportunities and ensure that audit quality rises.

Chartered accountants are outraged about mandatory joint audits that force one to take responsibility for the other's faults, company secretaries are furious about the ministry having scrapped the requirement for them in private companies, leading to job losses.

Judicial pronouncements in the past have held that auditors are not blood-hounds, said chartered accountant RS Mehta of SS Kothari Mehta & Co.

"It is practically not feasible for an auditor to make his audit more extensive within the limited timeframe allowed by Sebi (Securities and Exchange Board of India) for adoption of annual accounts than it is already doing," he said. "Companies want to release accounts within 30 days. While joint auditors for the same account may solve the problem to an extent, it is not acceptable by companies as it increases expenses as well as makes coordination more complex."

The new rule making the entire body of partners responsible for any act of negligence by one will have a deleterious effect, he said. "The new rule will only encourage taking up of non-audit work by firms which are not registered and therefore, not subject to the discipline of the ICAI (Institute of Chartered Accountants of India)," said Mehta.

ICAI has found fault with the rotation of auditors that's now required. "The auditors' rotation has (until) now been restrict-

ed to certain class of companies, leaving close to 90% of the companies outside the scope of rotation of auditors," said ICAI president CA K Raghu.

Company secretaries say they are the worst affected. About 93% of India's 9 lakh companies are private, no longer needing the statutory services of a company secretary under the new rules. This will hit corporate governance, they warned.

The new rule makes all partners responsible for any act of negligence by one

"This has made the future dark for 35,000 members of the CS Institute and 4 lakh students. On the other hand, corporate governance of a large section of corporates is going to take a back seat," said SK Jain, a Mumbai-based company secretary.

Cost accountants have been protesting against the rules from the draft stage itself, claiming that the scope of their work has also been curtailed. The corporate affairs ministry is yet to notify the final rules for cost audit leading to confusion among professionals. "The section regarding cost au-

dit and records has been notified effective April 1, 2014, but the rules governing the same are not," said Amit Apte, central council member of the Institute of Cost Accountants of India. "We are advising companies to follow the old rules till the time final rules for cost audit are notified."

S Santhana Krishnan, chairman of the corporate laws committee of the chartered accountants' institute and member of the rules committee of the corporate affairs ministry, admitted that discharging professional functions will become more difficult. However, the new rules open up new opportunities, he said.

"Some people have looked at the Act as an employment guarantee scheme. It is inappropriate. Those who believe they have lost opportunities will actually get more opportunities as per the new rules," said Krishnan. For example, cost accountants can now become internal auditors as well. Company secretaries and CFOs are part of key management personnel. Chartered accountants will get new consulting opportunities such as financial control, corporate governance etc, he said.

New Rules, New Headache

THE PAINS

CAs against mandatory joint audits that force one to take responsibility for the other's faults

Company secretaries protest putting a stop to their service in private cos, leading to job losses

Cost accountants claim the scope of their work has also been curbed

ICAI has found fault with the rotation of auditors that's now required

THE GAINS

Experts argue the auditors will now get more opportunities

Cost accountants can now become internal auditors

Company secretaries and CFOs are part of key management personnel

Chartered accountants will get new consulting opportunities such as financial control, corporate governance etc

9 lakh

Estimated number of cos in India

93%

of Indian cos are private

Restriction on the services of CS in pvt cos has made the future dark for 35,000 members of the CS Institute and 4 lakh students



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