

# COMPANIES ACT 2013 - A FRESH START

The recently enacted Companies Act 2013 has far-reaching consequences on all companies operating in India. The Act aims to raise the bar on corporate governance and deals with several themes such as director responsibility, auditor accountability, fraud mitigation and tighter reporting framework. There is also a marked increase in compliance requirements for Companies, in particular for Private Limited Companies, under the new Act.

In this newsletter, we provide an overview of key areas that require immediate attention of management of Companies.

---

Rakesh Jain & Co.  
Chartered Accountants

## Contents

---

<b>INTRODUCTION</b>	<b>1</b>
<b>WIDER DIRECTOR AND MANAGEMENT RESPONSIBILITY</b>	<b>2</b>
<b>NEW COMPLIANCES AND DISCLOSURES</b>	<b>4</b>
<b>GREATER AUDITOR ACCOUNTABILITY</b>	<b>5</b>
<b>CONTRAVENTIONS AND PENALTIES AT A GLANCE</b>	<b>6</b>

For Private Circulation only  
June 2014

## WIDER DIRECTOR AND MANAGEMENT RESPONSIBILITY

Companies Act 2013 has introduced greater responsibilities on Directors and management of companies.

- Regulation of related party transactions
- Restriction on loans
- High accountability for Statutory filings
- Resident Director
- Board meetings
- Additional responsibility on Board of Directors
- Directors Identification Number (DIN)
- Number of Directors
- Number of Directorships

### Regulation of related party transactions

Companies Act 2013 has introduced stringent rules with regard to disclosure of related party transactions.

#### **(1) Disclosure of interest**

Every Director will disclose his interest/concern in any Company or Firm including shareholding to the Board of Directors -

- a) in the first Board Meeting after appointment and
- b) in the first Board Meeting every financial year.

Where any change of interest occurs, Director needs to inform such change in interest to the Board immediately.

#### **(2) Approval of related party contracts in Board Meetings / Shareholder meetings**

Where Directors are interested in a contract, they are not eligible for attending the Board Meeting where such contracts are approved.

Certain specified related party contracts can be approved only in shareholder meetings. Further, in case of companies with only 2 Directors, where one of the Directors is interested in a contract, such contract can only be approved at a shareholder meeting.

### Restrictions on loans

Companies Act 2013 prohibits a Company from giving loan/guarantee, directly or indirectly, to Director or any person in whom Director is interested.

The new Act also prohibits a Director from giving money, in any form, to Company where such money has been funded out of borrowings taken by such Director. Such loan will be considered a Deposit under the new Act.

Moreover company is prohibited from taking loans from shareholders

## Higher accountability for statutory Filings

### a) **Annual return -**

Where a Company fails to file Annual Returns for any continuous period of 3 years, its directors shall not be eligible for re-appointment as a Director of that Company or appointment in any other Company.

### b) **Board resolutions -**

Certain Board resolutions are now required to be filed with Registrar within specified time limits

## Resident Directorships

At least 1 Director shall be ordinary resident in India i.e he has stayed in India for aggregate period of at least 182 days.

## Board meetings

- a) Company needs to hold at least 4 Board meetings in a year. However in case of 'Small Companies' (as defined in the new Act) minimum of 2 Board meetings are required.
- b) Maximum gap between 2 board meetings will be 120 days.
- c) A Director should attend at least 1 Board meeting during a financial year.

## Additional responsibility on Board of Directors

Certain transactions now require prior approval of Board through a resolution -

- a) Borrow money
- b) Invest funds
- c) Take note of Director's interests
- d) Buy / sell investments aggregating more than 5% of the paid up capital and free reserves
- e) Grant loans / give guarantee / provide security for loans

Further, such Board resolutions are now mandatorily required to be filed with Registrar within a period of 30 days.

## Directors Identification Number (DIN)

All existing directors must have Directors Identification Number (DIN) allotted by central government. Directors who already have DIN need not take any action. Directors not having DIN should initiate the process of getting DIN allotted to him and inform companies. The Company, in turn, has to inform registrar.

## Number of Directors

The 2013 Act requires that the company shall have a maximum of fifteen directors and appointing more than fifteen directors will require special resolution by shareholders.

## Number of Directorships

The new Act provides that a person cannot have directorships (including alternate directorships) in more than twenty companies, including ten public companies. It further provides for one year transition from 01 April 2014 to comply with this requirement.



## NEW COMPLIANCES AND DISCLOSURES

Companies Act 2013 has significantly increased compliances of private limited companies and has introduced severe penalties for non-compliance.

- Immediate changes in letterheads, bills etc
- Directors' report
- Annual Return
- Secretarial records
- Resolutions to be filed with Registrar

### Immediate changes in letterheads, bills etc

Bills, letterheads and other official communications of the Company are now required to carry Corporate Identification Number (CIN), Registered office address, website, email, phone and fax details. These were not mandatory earlier.

### Directors' report

Companies Act 2013 has seeks to make Boards' report more informative with extensive additional disclosures like -

- a) Extract of Annual Return
- b) Number of Board meetings held
- c) Particulars of Loans, Guarantee and Investments
- d) Related party transactions along with justification for entering into such transactions

### Annual return

Annual return will also be more informative to include -

- a) Details of Promoters, Directors and Key Management Personnel along with any changes therein
- b) Meetings of Members and Directors along with attendance details
- c) Remuneration of Directors and Key Management Personnel
- d) Penalty / punishment imposed on Company and its management

Copies of Annual Returns are required to be preserved for 8 years

### Secretarial records

Companies are now required to maintain various secretarial records in '*prescribed formats*'. Non-compliance attracts severe penal provisions. Some of the important secretarial records required to be kept under statute are -

- a) Register of Members
- b) Register of Directors and key management personnel
- c) Register of Contracts in which Directors are interested
- d) Register of Loans, guarantee and security made by Company
- e) Minutes of meetings of Board and Shareholders
- f) Details of changes in Shareholding

### Resolutions to be filed with Registrar

Company now needs to file copy of various resolutions passed at meetings of Board / Members, like -

- a) Taking note of Directors' interests
- b) Borrowing money
- c) Investment of Funds
- d) Buying or selling investments held by Company constituting more than 5% of the paid up capital and free reserves.
- e) Special resolutions passed at Shareholder meetings

## GREATER AUDITOR ACCOUNTABILITY

Auditor responsibilities have been significantly increased in the new Act.

The penalty provisions and other repercussions that an auditor may now be subject to includes monetary penalties, imprisonment, debarring of the auditor and the firm, and in case of frauds, can even be subject to class action suits.

- Audit report
- Fraud reporting

### Audit report

Companies Act 2013 has extended reporting requirements on auditors. As per the Act, Auditor has to report:

- Where the company has failed to provide any information and explanations, the details of the same and their effect on financial statements.
- Whether the company has adequate internal financial controls in place and the operating effectiveness of such controls.
- Observations or comments on financial transactions or matters which have any adverse effect on the functioning of the company
- Any qualification, reservation or adverse remark relating to the maintenance of accounts and other matters connected therewith.
- Whether Company has disclosed impact of pending litigations on its financial position in the financial statements
- Whether Company has made provision for material foreseeable losses.

### Reporting on fraud

If in the course of performance of his duties as auditor, the auditor has reason to believe that an offense involving certain fraud is being or has been committed against the company by officers or employees, the matter should be reported to the Central Government within specified period of time.

## CONTRAVENTIONS AND PENALTIES AT A GLANCE

COMPLIANCE AREA	PENALTY ON CONTRAVENTION
Non filing Annual return before expiry of period with additional fee	<ul style="list-style-type: none"> <li>• Company-Fine- Not less than Rs. 50,000 Thousand and may extend to Rs. 5 lakhs</li> <li>• Officer in default- Maximum imprisonment of six months or Fine- Not less than Rs. 50,000 Thousand and may extend to Rs. 5 lakhs or with both.</li> </ul>
Default in Books of account, etc., to be kept by Company	<ul style="list-style-type: none"> <li>• Officer in default- Maximum imprisonment of 1 year or Fine- Not less than Rs. 50,000 and may extend to Rs. 5 lakhs or with both.</li> </ul>
Default in preparation of Financial statement	<ul style="list-style-type: none"> <li>• Officer in default- Maximum imprisonment of 1 year or Fine- Not less than Rs. 50,000 and may extend to Rs. 5 lakhs or with both.</li> </ul>
Default in provisions of approval of Financial statement, Board's report, etc	<ul style="list-style-type: none"> <li>• Company-Fine- Not less than Rs. 50,000 and may extend to Rs.25 lakhs</li> <li>• Officer in default- Maximum imprisonment of 3 years or Fine- Not less than Rs. 50,000 and may extend to Rs. 5 lakhs or with both.</li> </ul>
Person acts as director even he is disqualified (Vacation of office)	<ul style="list-style-type: none"> <li>• Director – Maximum imprisonment for 1 year or Fine- Not be less than Rs. 1 lakh and may extend to Rs. 5 lakhs or with both.</li> </ul>
Loan to directors, etc.	<ul style="list-style-type: none"> <li>• Company-Fine- Not less than Rs. 5 lakhs and may extend to Rs.25 lakhs</li> <li>• Officer in default- Maximum imprisonment of 6 months or Fine- Not less than Rs. 5 lakhs and may extend to Rs. 25 lakhs or with both.</li> </ul>
Loan and investment by Company	<ul style="list-style-type: none"> <li>• Company-Fine- Not less than Rs.25,000 and may extend to Rs. 5 lakhs</li> <li>• Officer in default- Maximum imprisonment of 2 years or Fine- Not less than Rs. 25,000 and may extend to Rs. 1 lakh or with both.</li> </ul>
Related party transactions	<ul style="list-style-type: none"> <li>• In case of unlisted Company, be punishable with fine which shall not be less than 25,000 rupees but which may extend to 5 lakh rupees</li> </ul>
Registration of Charges	<ul style="list-style-type: none"> <li>• Company-Fine- Not less than Rs.1 lakh and may extend to Rs.10 lakhs</li> <li>• Officer in default- Maximum imprisonment of six months or Fine- Not less than Rs. 25,000 and may extend to Rs. 1 lakh or with both.</li> </ul>

COMPLIANCE AREA	PENALTY ON CONTRAVENTION
Copy of financial statements to be filed with Registrar	<ul style="list-style-type: none"> <li>• Company-Fine- Not less than Rs.1000 for every day in default but not more than 10 lakhs</li> <li>• Officer in default- Maximum imprisonment of 6 months or Fine- Not less than Rs. 1 lakh and may extend to Rs. 5 lakhs or with both.</li> </ul>
Disclosure of interest by director	<ul style="list-style-type: none"> <li>• Such person in default- Minimum 1 year imprisonment or Fine- Not less than Rs. 50,000 and may extend to Rs. 1 lakh or both.</li> </ul>
Punishment for fraud	<ul style="list-style-type: none"> <li>• Any person who is found to be guilty of fraud- Maximum imprisonment of 6 months may extend to 10 years</li> <li>• Such person also liable to fine which may extent to 3 times the amount involved.</li> </ul>

## RAKESH JAIN & CO

Chartered Accountants

For more information, please visit our office at  
D-136 East of Kailash New Delhi 110065  
or visit us at [www.rakeshjainca.com](http://www.rakeshjainca.com)

We can be contacted at  
+91 11 26460082 | +91 11 26215174

You may direct your queries, comments to us at  
[contact@rakeshjainca.com](mailto:contact@rakeshjainca.com)

The information contained herein is of a general nature and is not intended to address the circumstances of any particular individual or entity. Although we endeavor to provide accurate and timely information, there can be no guarantee that such information is accurate as of the date it is received or that it will continue to be accurate in the future. No one should act on such information without appropriate professional advice after a thorough examination of the particular situation.