

FREQUENTLY ASKED QUESTIONS ON THE COMPANIES ACT, 2013



The Institute of Chartered Accountants of India
(Set up by an Act of Parliament)
New Delhi

Frequently Asked Questions On The Companies Act, 2013



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First Edition : February 2017

Committee/Department : Corporate Laws & Corporate Governance Committee

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Website : www.icai.org

ISBN No. : 978-81-8441-858-3

Published by : The Publication Department on behalf of the Institute of Chartered Accountants of India.
ICAI Bhawan, Post Box No. 7100,
Indraprastha Marg, New Delhi – 110 002,
India.

Foreword

The Companies Act, 2013 was enacted to consolidate and amend the law relating to companies and making Indian law at par with the best International Standards. It was one of the most significant legal reforms in India in the recent past.

The law is aimed at easing the process of doing business in India and improving corporate governance by making companies more accountable.

Since the Companies Act is being implemented and during the last three years of its enactment, issues are being resolved with the issuance of Circulars, Notifications, Amendment in Rules/ Act, Companies Removal of Difficulty Orders etc by the Ministry of Corporate Affairs.

Still there are challenges for the stakeholders to keep themselves abreast of the frequent developments and understanding the intricacies of various new provisions of the law. Although, the major amendments have been proposed in the Companies Act, 2013 through the Companies (Amendment) Bill, 2016 which is now before the Parliament.

I am happy to inform you that ICAI has been part of the consultation process for drafting the Companies (Amendment) Bill, 2016.

I congratulate the Corporate Laws & Corporate Governance Committee of the Institute of Chartered Accountants of India (ICAI) to take this initiative in bringing out a comprehensive book on Frequently Asked Questions of Companies Act, 2013 and to provide guidance to the members of the profession for clear interpretation and understanding of the new law.

I appreciate the Corporate Laws & Corporate Governance Committee (CL & CGC) in bringing this publication which is so useful for our members. I extend my sincere appreciation to CA. Dhinal Shah and CA. K. Sripriya, the Chairman and Vice Chairperson of the Corporate Laws & Corporate Governance Committee respectively, my Council Colleagues, other members of the Committee, Co-opted members and Special Invitees of the Committee to bring out this important publication.

I am confident that this publication would be of great help to the members and other stakeholders.

New Delhi
2nd February, 2017

CA. Deveraja Reddy M
President, ICAI

Preface

The Companies Act, 2013 was enacted to improve Corporate Governance and better transparency in the corporate sector which is imperative to infuse confidence amongst investors in Indian market and abroad and to further strengthen regulations for the companies, keeping in view the changing economic environment as well as the growth of our economy. The Ministry of Corporate Affairs has been taking proactive initiatives by making the existing law simple and comprehensive fostering a positive environment for investment and growth.

There are 470 sections in the Companies Act, 2013 but various provisions of the Act were notified in the last two and a half year in a phased manner.

The Companies (Amendment) Bill, 2016 is also before the Parliament where large amendments to the Act have been proposed that were necessary for proper and effective implementation of the Companies Act, 2013. Institute has contributed substantially for the proposals in the Bill. Also, wherever there are amendments proposed in the Bill, the same have been incorporated in the respective sections.

In view of the extent and scope of changes in the new Act, the stakeholders took some time to come to terms with the new provisions, and faced some difficulties in the implementation of the Act.

To facilitate the understanding and interpretation of the provisions of Companies Act, 2013, the Corporate Laws & Corporate Governance Committee decided to bring out a publication on the Frequently Asked Questions in the Companies Act 2013.

The publication has been designed in a question and answer format to assist our members and fellow professionals in mitigating various queries relating to the Companies Act, 2013.

In this connection I take this opportunity in thanking the President of ICAI, CA. M. Devaraja Reddy and Vice President CA. Nilesh S. Vikamsey for their moral support and encouragement in bringing out the publication. I place on record my appreciation to CA. K. Sripriya, Vice Chairperson of the Corporate Laws & Corporate Governance Committee and the other committee members for their help and guidance in framing and bringing out this publication comprising of the Frequently Asked Questions on the provisions of Companies Act, 2013.

I would like to thank Ms. Purna Devi, Mr. Bikash Prasad, Ms. Sangeetha HN, Ms. Shubhra Gupta who were involved in putting together the FAQ

I sincerely believe that the members of the profession, industries and other stakeholders will find the publication immensely useful.

New Delhi
2nd February, 2017

CA. Dhinal Ashvinbhai Shah
Chairman
Corporate Laws & Corporate Governance Committee,
ICAI

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Glossary

AGM	Annual General Meeting
AOA	Articles of Association
CA, 1956	Companies Act, 1956
CA, 2013	Companies Act, 2013
CIN	Corporate Identification Number
CSR	Corporate Social Responsibility
DIN	Director Identification Number
EGM	Extra-ordinary General Meeting
ESOP	Employees Stock Option Plan
FEMA	Foreign Exchange Management Act, 1999
ROC	Registrar of Companies
MCA	Ministry of Corporate Affairs
MOA	Memorandum of Association
OPC	One Person Company
KMP	Key Managerial Personnel
RD	Regional Director
NCLT	National Company Law Tribunal

Incorporation and Allied Matters

Q1: What is SPICE?

A1: SPICE refers to **“Simplified Proforma for Incorporating Company Electronically”**. It is a simplified integrated process for incorporating a company in Form No. INC-32 along with e-MOA in Form No. INC-33 and e-AOA in Form No. INC-34. It has been recently introduced by the MCA and is effective from 1 October 2016.

Q2: In case the subscriber to the MOA is a foreign national residing outside India, his signatures and address etc. shall be witnessed by a Notary Public/Embassy/Consulate offices of Embassies as per the Rule 13 of the Companies (Incorporation) Rules, 2014. In such cases, how can the DSC of such a witness be affixed?

A2: In such cases, SPICE (INC-32) shall be filed along with the manually signed and duly attested MOA and AOA.

Q3: Whether every company is required to follow the SPICE process for incorporation of a company?

A3: As per Companies (Incorporation) Fifth Amendment Rules, 2016, all companies except Part I companies and a company having more than 7 subscribers/promoters are required to follow the SPICE process for incorporation with effect from 1 January 2017.

Q4: Can a company apply for name availability certificate by filing Form INC-1 prior to filing of SPICE form?

A4: Yes, an applicant can make an application in Form INC-1 for name availability as per Rule 9 of the Companies (Incorporation) Rules, 2014, and file incorporation documents through SPICE mode on approval of the name. However, such name shall be reserved for a period of 60 days from the date of making an application.

However, as per the proposed Companies Amendment Bill, 2016 which is yet to be notified, name shall be reserved for a period of 20 days from the date of approval or such other period as may be prescribed shall be substituted.

Q5: Can a company be incorporated without a registered office?

A5: Yes, a company may be incorporated without having a registered office address by providing an address for correspondence in the incorporation form. However, as per Section 12 of the CA, 2013 read

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with Rule 25 of the Companies (Incorporation) Rules, 2014 on or from the 15th day of its incorporation and at all time thereafter, a company is required to have a registered office. The company which has not intimated address of its registered office at the time of incorporation is required to intimate to ROC of the same within 30 days of incorporation.

However, as per the proposed Companies Amendment Bill, 2016 which is yet to be notified, a Company can have its registered office within 30 days of its incorporation as against 15 days as per the present requirement.

Q6: In case of an overseas subscriber and director, are the documents required to be notarised and apostilled for incorporation of a company?

A6: As per Rule, 13 of the Companies (Incorporation) Rules, 2014, where the subscriber to the MOA or a director to be appointed is a foreign national residing outside India, the MOA, AOA, proof of identity as well as address proof shall be attested in the following manner which is based on the country where the subscriber/ director reside or the registered office is situated in case of a body corporate being the subscriber:

1. Residing in a country which is part of the Commonwealth - by a Notary (Public) in that part of the Commonwealth;
2. Residing in a country which is party to the Hague Apostille Convention, 1961 - by a Notary (Public) and duly apostilled in accordance with the said Hague Convention; and
3. Residing in a country which is not party to the Hague Apostille Convention, 1961 - the documents shall be notarized before the Notary (Public) of such country and the certificate of the Notary (Public) shall be authenticated by a Diplomatic or Consular Officer empowered in this behalf under Section 3 of the Diplomatic and Consular Officers (Oaths and Fees) Act, 1948 (40 of 1948) i.e. attested by Public Notary and authenticated by Indian Embassy in the country of residence.

Q7: What is the due date to intimate the ROC for change in the situation of registered office of the company?

A7: As per Section 12(4) of the CA, 2013 read with Rule 27 of the Companies (Incorporation) Rules, 2014, notice of every change in the

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situation of registered office of the company is required to be given to the ROC within 15 days of the change in Form INC-22.

However, as per the proposed Companies Amendment Bill, 2016 which is yet to be notified, every change in the situation of registered office of the company is required to be given to the ROC within 30 days of the change.

Q8: What is OPC?

A8: As per Section 2(62) of the CA, 2013, OPC means a company which has only one person as a member.

Q9: Can a non-resident become a member of an OPC?

A9: In terms of Rule 3 of the Companies (Incorporation) Rules, 2014, only a natural person who is an Indian citizen and resident in India is eligible to incorporate an OPC. Therefore, a non-resident cannot become a member or nominee of an OPC.

For the purposes of this rule, the term “resident in India” means a person who has stayed in India for a period of not less than one hundred and eighty two days during the immediately preceding one calendar year.

Q10: How many OPCs can be incorporated by a person or in how many OPCs, he shall be eligible to be a nominee?

A10: As per Rule 3(2) of Companies (Incorporation) Rules, 2014 no person is eligible to incorporate more than one OPC or become nominee in more than one such company.

Rule 3(2) of the Companies (Incorporation) Rules, 2014 was substituted vide Notification dated 27 July 2016, Companies (Incorporation) Third Amendment Rules, 2016, as per which a natural person shall not be member of more than an OPC at any point of time and the said person shall not be a nominee of more than an OPC.

Q11: Can a company registered under Section 8 merge with another company with dissimilar objects?

A11: As per Section 8(10) of CA, 2013, a company registered under Section 8 can only be merged with another Section 8 company which has similar objects.

Q12: Is a Section 8 company required to seek permission of Central Government (“RD”) for alteration of its AOA prior to getting the

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same approved by the members by means of special resolution in general meeting?

A12: Yes, as per Section 8 (4)(i) of CA, 2013, Section 8 Company is required to obtain prior approval of Central Government (power delegated to "RD") for alteration of its articles. However, members may pass the resolution for alteration of articles prior to the approval, but it shall be effective only post approval from the Central Government ("RD").

Q13: How will the surplus be treated in case of winding up of Section 8 Company?

A13: As per Section 8(9) of CA, 2013 (*applicable w.e.f. 15.12.2016*), any asset remaining after satisfaction of the debts will be transferred to another company registered under Section 8 of the CA, 2013 having similar objects, subject to such conditions as the NCLT may impose, or the same may be sold and proceeds thereof will be credited to the Insolvency and Bankruptcy Fund formed under Section 224 of the Insolvency and Bankruptcy Code, 2016.

Q14: What is Small Company?

A14: As per Section 2(85) of the CA, 2013, a Small Company, other than public company, means a company where the:

- (a) paid-up share capital of the company does not exceed INR 50 Lakhs or such higher amount as may be prescribed which shall not be more than five crore rupees; and
- (b) turnover as per its last profit and loss account does not exceed 2 Crores or such higher amount as may be prescribed which shall not be more than twenty crore rupees:

Note: No higher amount has been prescribed as yet.

Further, 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.

However, 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.

Q15: Is it mandatory for the name of the company to be indicative of the nature of its business?

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A15: No, it is not mandatory for the name to be indicative of the nature of its business.

Q16: Can a company have multiple and varied objects under its MOA?

A16: The Object Clause of the MOA of a company defines the objects or business it can carry and there is no bar under Section 4 (1) (c) of CA, 2013 on a company from having multiple objectives. As a matter of practice, the authorities do not approve more than four to five objects in the Object Clause of the MOA.

However, as per the proposed Companies Amendment Bill, 2016 which is yet to be notified, the Company may engage in any lawful act or activity for the time being in force. In case, company proposes to pursue any specific objective, MOA shall state the said object for which company is incorporated.

Thus, as per the proposed Companies Amendment Bill, 2016, the question on multiple object or varied object would not arise.

Q17: Is a company required to alter its AOA as per the new format under the CA, 2013?

A17: As per the provisions of Section 5(6) of the CA, 2013, AOA of the company shall be in respective forms specified in Table F, G, H, I and J in Schedule I.

Also, as per the provisions of Section 5(9) of CA, 2013, provisions pertaining to AOA shall not apply to the AOA of company registered under any previous company law unless amended under the CA, 2013.

It is not necessary, but advisable that subsequent to any amendment to the AOA, the AOA is aligned as per the format specified under the CA, 2013.

Q18: Is a company required to pass a special resolution for altering its MOA?

A18: As per the provisions of Section 13(1) of the CA, 2013, a company is required to pass special resolution for altering its MOA except for the alteration of capital clause of MOA which could be altered by passing ordinary resolution as per the provisions of Section 61 of the CA, 2013.

Q19: Is an approval from Central Government ("RD") required for alteration of MOA relating to change in place of registered office from one state to another?

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A19: As per Section 13(4) of the CA, 2013, the alteration of MOA relating to change in place of registered office from one state to another shall not have any effect unless it is approved by the Central Government. As the powers of Central Government on this aspect are delegated to RD, the company will have to make an application and obtain the approval from the RD.

Q20: In case of shifting of registered office from one state to another there is a requirement of filing the order with each of the ROC's. Is it possible to file two forms with a single CIN?

A20: No, it is not possible to file order approving the change of registered office with two different ROC's with the same CIN.

As per Section 13 (7) of CA, 2013 read with Rule 31 of the Companies (Incorporation) Rules, 2014, the order of the RD approving the change of registered office from one state to another has to be filed in Form INC-28 with the ROC of each of the state within 30 days from the receipt of the certified copy of the order. Given the practical challenge, that the company cannot file Form INC-28 twice with the same CIN, the form is required to be filed with the ROC under whose jurisdiction the registered office was originally situated. The company will then have to file the Form INC-28 again with the new ROC where the registered office of Company is shifted.

Q21: What is the limit on the number of members for formation of association or partnership of persons?

A21: Section 464 of the CA, 2013 provides that no association or partnership can be formed with the number of members exceeding hundred (100) subject to the Rules prescribed under the CA, 2013. Rule 10 of Companies (Miscellaneous) Rules, 2014 provides that no association or partnership can be formed with the number of members exceeding fifty (50).

Therefore, the limit of number members for formation of association or partnership of persons is fifty (50).

Q22. Will the notifications, circulars, rules, orders issued for certain type of companies under Companies Act 1956 still be applicable for those companies under the Companies Act 2013?

A22: Section 465 (2) of the CA, 2013 provides that the notification, circular, rules, orders issued under CA, 1956, insofar as it is not inconsistent with the provisions of CA, 2013, be deemed to have been done or taken under the corresponding provisions of the CA, 2013. It further

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provides that it shall continue to be in force, if it was in force at the commencement of the CA, 2013 and shall have effect as if made, directed, passed, given, taken, executed, issued or done under or in pursuance of the CA, 2013.

Considering the aforesaid, notifications, circulars, rules, orders issued for certain type of companies under the CA, 1956 will also be applicable for those companies under the CA, 2013.

Q23. Is a Small Company required to prepare Cash Flow Statement?

A23: As per Proviso to Section 2(40), exemptions have been granted to Small Company, OPC and Dormant Company with effect from 1st April, 2014. Therefore, it is not mandatory for a Small Company to prepare Cash Flow Statement.

Q24. Is it mandatory for a company to have a common seal?

A24: No, as per the Companies (Amendment) Act 2015, the companies are not mandatorily required to have common seal. Further, the existing companies may amend their AOA to this effect.

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Q25: Is a private company required to follow the rules pertaining to issue of shares with differential voting rights?

A25: As per notification No. GSR 464(E), dated 5th June, 2015 issued by MCA, Section 43 pertaining to kinds of share capital is not applicable to a private company, if same is provided in the MOA and AOA of that private company and hence, private company can issue shares with differential voting rights without following the conditions prescribed for issue of shares with differential voting rights.

Q26: Is it mandatory to issue share certificate under the common seal of the company?

A26: No, it is not mandatory to issue share certificates under the common seal of the company. As per the Companies (Amendment) Act, 2015 read with Companies (Share Capital and Debentures) Second Amendment Rules, 2015, every share certificate shall be issued under the common seal, if the company has a common seal.

Q27: Who is required to sign the share certificate?

A27: As per Section 46 of the CA, 2013, read with Rule 5(3) of the Companies (Share Capital and Debentures) Rule, 2014, a share certificate can be signed in the following manner:

a. Company other than OPC:

- (i) If a company has a common seal, the share certificate is required to be signed by two Directors and Secretary or any person authorized by the Board for the purpose.
- (ii) If a company does not have a common seal, then the share certificates shall be signed by two directors or a Director and the Company Secretary, where the company has appointed a Company Secretary.

b. OPC:

- (i) If a company has a common seal, the share certificate is required to be signed by one Directors or a person authorized by the Board of Directors of the company and Secretary or any other person authorized by the Board for the purpose.

- (ii) If a company does not have a common seal, then the share certificates shall be signed by a person in whose presence the seal is required to be affixed.

Q28: What are the modes available for issue of further shares?

A28: As per Section 23 of the CA, 2013, following modes are available for issue of further shares:

1. Public Companies:

- a) Public offer through issue of prospectus;
- b) Private Placement/ Preferential allotment;
- c) Issue of shares to employees under a scheme of employees' stock option; and
- d) Right issue/ bonus issue

2. Private Companies:

- a) Right issue/ bonus issue;
- b) Issue of shares to employees under a scheme of employees' stock option; and
- c) Issue of shares to any person through preferential allotment/ private placement.

Q29: Can subsidiary company hold shares in its holding company?

A29: As per Section 19 of the CA, 2013, subsidiary company cannot hold shares in its holding company and any such holding shall be void except in following circumstances:

- a) where the subsidiary company holds such shares as the legal representative of a deceased member of the holding company;
- b) where the subsidiary company holds such shares as a trustee;
- c) where the subsidiary company is a shareholder even before it became a subsidiary company of the holding company.

Q30: Can a company issue shares at a discount?

A30: As per Section 53 of CA, 2013, no company shall issue shares at a discount other than issue of sweat equity shares. Any shares issued by a company at a discounted price shall be void.

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However, 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.

Q31: Is a company required to obtain shareholders' approval for preferential issue of shares?

A31: Yes, as per Section 62(1)(c) read with Rule 13(1) of the Company (Share Capital and Debenture) Rules, 2014, a company is required to obtain shareholders' approval by way of special resolution in the general meeting of the company.

Q32: What is the maximum number of persons to whom private placement offer can be made?

A32: 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 to whom the securities are to be issued cannot exceed two hundred person in aggregate in a financial year.

Q33: Who are exempted from being included in the limit of 200 persons to whom private placement offer is issued?

A33: As per Section 42 of CA, 2013 read with Rule 14 of the Companies (Prospectus and Allotment of Securities) Rules, 2014, any offer made to the qualified institutional buyers or the employees of the company under the employee stock option scheme are exempted from being considered in determining the maximum limit.

Q34: Is a share valuation report required in case of Right Issue of Shares?

A34: Share valuation report is not required in case of right issue of shares. However, in case of issue of shares to non-resident, valuation is required to be carried out as per the provisions of FEMA.

Q35: Can Board of Directors of a company take a decision to issue Preference Shares?

A35: No, as per Rule 9(1)(a) of Companies (Share Capital and Debentures) Rules, 2014, preference shares can only be issued after obtaining approval of shareholders through a special resolution in general meeting. Hence, Board of Directors can only recommend to the shareholders along with a detailed explanatory statement for approval.

Q36: Can a private company issue debentures to public?

A36: No, a private company cannot issue debentures to public. The definition of a 'private company' as laid down in Section 2 (68) of the CA, 2013 prohibits a company from inviting public to subscribe to any securities issued by it. Given the prohibition to subscription by the public, a private company can issue debentures only through private placement.

Q37: Is a company required to intimate the ROC post redemption of preference shares?

A37: Yes, as per Section 64 of the CA, 2013, a company is required to intimate the particulars of redemption to the ROC in Form SH-7 within 30 days of redemption of preference shares.

Q38: What is the form for filing return of allotment with the ROC post allotment of securities?

A38: As per the provisions of Section 39(4) of the CA, 2013 read with Rule 12 of the Companies (Prospectus and Allotment of Securities) Rules, 2014, a Company is required to file a return of allotment within 30 days from the date of allotment of shares in Form PAS-3 with the ROC along with the list of allottees.

However, as per the proposed Companies Amendment Bill, 2016 which is yet to be notified, in case of allotment of shares issued through private placement procedure, the return of allotment shall be filed with the ROC within 15 days from the date of allotment.

Q39: Is it mandatory to get the securities listed in case of a public offer?

A39: Yes, as per Section 40 of the CA, 2013, it is mandatory for companies to make an application to one or more recognised stock exchange or exchanges and obtain permission for the securities to be dealt with in such stock exchange or exchange before making a public offer.

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Q40: Section 40(1) of the CA, 2013 requires a company to make an application to the stock exchanges for listing of securities and obtaining permission prior to making an offer. The requirement under Section 73(1) of the CA, 1956 was only to make an application. Hence, is it now required to obtain prior permission from the stock exchanges or is making an application a sufficient compliance?

A40: As per Section 40(1) of the CA, 2013, it is specifically provided that every company which desires to make public offer should make an application to one or more stock exchanges and take prior permission for dealing in securities. Hence, company intending to make a public offer is required to make an application and obtain approval of shareholders prior to making an offer.

Q41: What is the offer period for rights issue?

A41: As per Section 62(1)(a)(i) of the CA, 2013, the rights issue offer shall be kept open for a minimum period of 15 days and maximum period of 30 days. However, in case of a private company, offer period may be reduced by obtaining consent in writing or through electronic mode of 90% of the members of private company. [*This exemption is available to private company vide notification No. GSR 464(E) dated 5th June 2015*].

Q42: Can a company pass the resolution for issue of securities by way of circulation?

A42: As per Section 179(3) of the CA, 2013, resolution with regard to issue of securities should be discussed and passed at a duly convened Board meeting and hence, resolution cannot be passed through circulation.

Q43: Can a company convert the existing shares into shares with differential voting rights and vice versa?

A43: No, as per Rule 4(3) of Companies (Share Capital and Debenture) Rules 2014, company cannot convert its existing shares into shares with differential voting rights and vice versa.

Q44: What is meant by sweat equity shares and to whom can a company issue sweat equity shares?

A44: As per Section 2(88) of the CA, 2013, sweat equity shares means shares issued at a discount or for consideration other than cash to the Directors and employees for providing know-how or making available rights in the nature of intellectual property rights or value addition.

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As per Rule 8(1) of the Companies (Share Capital and Debentures) Rules, 2014, sweat equity shares can be issued to employees of the company as classified below:

permanent employee of the Company who has been working in India or outside India, for at least one year;

a Director of the Company, whether a whole time Director or not;

an employee or a director as specified above of a subsidiary or of a holding of the company

Q45: What is the lock-in period for sweat equity shares?

A45: As per Rule 8(5) of the Companies (Share Capital and Debentures) Rules, 2014, sweat equity shares issued to the employees or Directors of the Company shall be locked-in for a period of 3 years from the date of issue and the same shall be stamped or mentioned in any other prominent manner on the share certificate.

Q46: What is the cap on issue of sweat equity shares?

A46: The cap on issue of sweat equity shares is as follows:

- (i) In a year, issue shall not exceed 15% of the existing issued equity share capital or issue value of INR 5 crores whichever is higher;
- (ii) At any time, issue shall not exceed 25% of the total paid up equity capital of the Company but a start-up company can issue sweat equity shares not exceeding 50% of its paid up capital up to five years from the date of its incorporation [*The Companies (Share Capital and Debentures) Third Amendment Rules, 2016*].

Q47: Are all kinds of companies required to obtain approval of shareholders by means of a special resolution for issuing shares under ESOP?

A47: As per Section 62(1)(b) of the CA, 2013, all companies other than private companies are required to obtain approval by means of a special resolution in general meeting for issuing shares under ESOP. As per notification No. GSR 464(E) dated 5 June 2015, in case of private companies, an ordinary resolution by the shareholders would suffice the requirement for issue of shares under ESOP.

Q48: Can an employee who is also a promoter of a company eligible to obtain sweat equity shares and employee stock of option?

A48: As per Rule 12 of Companies (Share Capital and Debentures) Rules, 2014, employee who is also a promoter or person belonging to the

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promoter group is specifically excluded from obtaining shares issued under ESOP. In case of a start-up company as defined in notification number GSR 180(E) dated 17th February, 2016 issued by the Department of Industrial Policy and Promotion, Ministry of Commerce and Industry Government of India, Government of India, this condition shall not apply up to five years from the date of its incorporation or registration. [*The Companies (Share Capital and Debentures) Third Amendment Rules, 2016*].

However, in case of sweat equity shares, the said exclusion is not specified in the provisions. Thus, an employee who is also a promoter of a company is eligible to get sweat equity shares and not the employee stock option.

Q49: Will all the employees of the company be eligible to participate in the ESOP?

A49: No, only those employees as determined by the management of the company shall be eligible to participate in the ESOP.

Q50: Has Section 66 pertaining to reduction of capital been enforced?

A50: Section 66 of the CA, 2013 for reduction of capital has been enforced with effect from 15 December 2016 and accordingly, every company is required to follow the provisions prescribed thereunder for reduction of share capital.

Q51: What is meant by the term “Buy back of Shares” and funds utilized for buy back?

A51: “Buy back” is a concept by which a company purchases its own shares or other specified securities by following the procedures laid down in Section 68 of the CA, 2013. The company can utilize free reserves, securities premium account or proceeds of the issue of fresh issue shares or other specified securities to purchase its own shares.

Q52: What is the limit prescribed for buy back of shares?

A52: As per the provisions of Section 68(2) of the CA, 2013, in case a special resolution has been passed by the members of the company at the general meeting, the company can buy back shares not exceeding 25% of the aggregate of paid-up capital and free reserves of the company and in case of buy back of equity shares in any financial year, it should not exceed 25% of its total paid-up equity capital in that financial year.

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Provided that the company can buy back 10% of the total paid-up equity capital and free reserves after obtaining approval of Board. In such a case, approval of the shareholders' by means of a special resolution will not be required.

Q53: Can a company buy back its shares if it is not authorized by its AOA?

A53: As per the provisions of Section 68(2) of the CA, 2013, a company cannot buy back its shares if it is not authorized by its AOA.

Q54: What is the time limit for completion of buy back?

A54: As per the provisions of Section 68(4) of the CA, 2013, every buy back shall be completed within a period of one year from the date of passing of the special resolution or resolution passed by the Board, as the case may be.

Directors

Q55: What is DIN?

A55: DIN is a unique identification number issued to a prospective director by the DIN cell of Ministry of Corporate Affairs ("MCA"). An individual should hold a DIN before being appointed as a director in any Company.

Q56: Is it mandatory for a director to hold digital signature?

A56: A director who is already holding a DIN can obtain a digital signature, though it is not mandatory. If a person is not holding DIN and intends to be appointed as a Director in a Company, he should obtain a digital signature for making an application for obtaining DIN to the DIN cell.

Q57: Who can be appointed as director?

A57: As per the provisions of Section 152 of the CA, 2013, an individual holding a valid DIN and not disqualified from being appointed as Director under Section 164 of the CA, 2013, is eligible to be appointed as Director. He shall give his consent to act as a director in writing along with the disclosure of his interest and a declaration that he is not disqualified to become a director under CA, 2013.

Q58: What are the broad steps involved in appointment of a director?

A58: The broad steps involved in appointment of a director are:

- Obtain DSC;

- Obtain DIN by filing Form DIR-3;

- Declaration that he is not disqualified from being appointed as the Director in form DIR-8;

- Written consent of director for his appointment in form DIR-2;

- Interest of the Director if any, in any other entity in form MBP-1;

- Approval of Board of directors by Board Resolution;

- Approval of Shareholders by shareholders Ordinary Resolution;

- Intimation of appointment of director to ROC in Form DIR-12

Q59: Can a director be appointed by the Board of a company?

A59: Although, as per the provisions of Section 152 of the CA, 2013, the directors of the Company are required to be appointed by the shareholders of the Company in general meeting, the Board of the Company, if authorised by the AOA of the company can appoint director under following circumstances:

Appointment of additional director;

Appointment of nominee director;

Appointment of alternate director;

Appointment of director for filling casual vacancy

Q60: What shall be the effective date of resignation of a director?

A60: As per the provisions of Section 168(2) of the CA, 2013, the resignation of a director shall take effect from the date on which the notice is received by the company or the date specified in the notice, whichever is later.

Q61: What are the procedures to be carried out by a director at the time of resignation from the company?

A61: As per the provisions of Section 168 of the CA, 2013 read with Rule 15 and Rule 16 of the Companies (Appointment and Qualification of Directors) Rules, 2014, a director may resign from his office in the following manner:

- (i) by giving a written notice to the Board; and
- (ii) shall forward a copy of his resignation along with detailed reasons to the ROC in Form DIR-11 within 30 days of resignation.

In case of resignation of a foreign director, such a foreign director can authorize in writing a practising chartered accountant or cost accountant in practice or company secretary in practice or any other resident director of the company to sign Form DIR-11 and file the same on his behalf with the ROC.

The Company on receipt of the notice of resignation from the Director shall:

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- (i) take the same on record;
- (ii) intimate the ROC in Form DIR-12 within 30 days; and
- (iii) place the fact of such resignation in the Board's Report laid in the immediately following general meeting of the company.

Q62: How long will the director be liable for the offences occurred during his tenure?

A62: The director shall be liable for the acts / transactions occurred during his tenure even after resignation and disassociation with the company.

Q63: Who are KMPs and whether their appointment requires additional compliance?

A63: KMP has been defined under Section 2(51) of the CA, 2013, to mean:

Chief Executive Officer or Managing Director or Manager;

Company Secretary;

Whole Time Director;

Chief Financial Officer

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

Provided that as per Rule 8A of the Companies(Appointment and Remuneration Managerial Personnel), Rules, 2014, a company other than those mentioned above needs to appoint a whole time Company Secretary if its paid-up share capital is rupees five crore or above.

Also, after the Companies (Appointment and Remuneration of Managerial Personnel) Amendment Rules, 2016, MR-1 is not required to be filed for Chief Executive Officer, Company Secretary and Chief Financial Officer w.e.f. 30.06.2016.

Q64: Can a director be removed from the Company?

Directors

A64: Yes, shareholders of the Company may by passing an ordinary resolution in general meeting remove a director, but after giving a reasonable opportunity of being heard pursuant to Section 169 of the CA, 2013. A special notice would be required for passing such resolution. Once shareholders remove a director from the Board, the Board of Directors cannot reappoint him.

Board Related Matters

Q65: Are all companies required to hold Board Meetings every quarter?

A65: As per Section 173 of the CA 2013 and Secretarial Standards 1, all companies – whether private limited companies or public companies are required to hold at least four meetings of its Board of Directors in each quarter every year where the gap between two consecutive board meetings is not more than one hundred and twenty 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.

In case of an OPC, if there is only one director on the Board of Director, the quarterly board meetings are not required to be held.

However, if the OPC has more than one director or in case of small or dormant companies, it will suffice the requirement, if they hold at least one meeting in each half of the calendar year and the gap between two meetings should not be less than ninety days. Further, any business which is required to be transacted at the meeting of the Board of Directors of a company, it shall be sufficient if, in case of such OPC, the resolution by such director is entered in the minutes book.

Q66: Can a Company restrict a director from participating in a meeting through video conferencing if he has not given an intimation of participating in the video conference meetings at the beginning of the year?

A66: No, a company cannot restrict a director from participating in a meeting through video conference if he has not given intimation at the beginning of the year. An intimation given to the company or chairman on receipt of the notice calling the board meeting would suffice the requirement for attending the meeting through video conferencing.

Q67: What are the matters which cannot be considered at a meeting held through video conferencing or other audio visual means?

Board Related Matters

A67: As per Rule 4 of the Companies (Meetings of the Board and its Powers) Rules, 2014, following matters shall not be considered through video conferencing or other audio visual means:

- (i) Approval of annual financial statements;
- (ii) Approval of board's report;
- (iii) Approval of prospectus;
- (iv) Audit Committee Meetings for consideration of financial statement including consolidated financial statement, if any, to be approved by the Board of Directors pursuant to Section 134(1) of the CA, 2013;
- (v) Approval of the matter relating to amalgamation, merger, demerger, acquisition and takeover.

However, as per The Companies (Amendment) Bill, 2016, which is yet to be notified, has proposed participation of Directors on certain items at Board Meetings through video conference or other audio visual means if there is quorum through physical presence of Directors.

Q68: Is the notice calling for the board meeting required to state that the meeting is being convened at a short notice?

A68: Yes, as per Secretarial Standards-1 effective from 1 July 2015, a company is required to state the fact that the board meeting is convened at a short notice in the notice calling the meeting. However, the CA, 2013 is silent in this regard.

Q69: Can a director interested in the contract participate in the board meeting or be counted for quorum as per Section 174 of CA 2013?

A69: As per provisions of Section 188 of the CA 2013, if any director is directly or indirectly, concerned or interested in a contract or arrangement or proposed contract or arrangement then such director shall disclose the nature of his concern or interest at the meeting of the Board in which the contract or arrangement is discussed and shall not participate in such meeting.

However, in case of a private limited company, as per notification No. GSR 464E dated 5th 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.

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Q70: Can meetings of the Audit Committee be held through video conference?

A70: Yes, the meetings of Audit Committee can be held through video conference except the meeting where financial statements including consolidated financial statements is considered for approval under Section 134(1) of CA, 2013.

Q71: Is a company required to obtain approval of the Audit Committee for all the transaction entered into with related parties?

A71: Yes, as per Section 177 of CA, 2013 read with Rule 6 and 6A of the Companies (Meetings of Board and its Power) Rules, 2014, a company is required to obtain approval of the Audit Committee for all the transactions entered into with related parties. Also, the Audit Committee has an option to grant omnibus approval which shall be valid for a period of one financial year.

However, as per the Companies (Amendment) Bill, 2016 which is yet to be notified, proposes to insert following amendments:

Ratification by Audit Committee of transactions involving amount not exceeding INR 1 Crores within 3 months of transaction;

Consequences of non-ratification of the transactions;

Exemption from approval of audit committee to transaction between a holding company and its wholly owned subsidiary.

Q72: Which powers of the board are required to be exercised at a duly convened board meeting?

A72: 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:

- (a) To make calls on shareholders in respect of money unpaid;
- (b) To authorise buy back of securities;
- (c) To issue securities, including debentures, whether in or outside India;
- (d) To borrow monies;
- (e) To invest the funds of the company;

Board Related Matters

- (f) To grant loans or give guarantee or provide security in respect of loans;
- (g) To approve financial statements and the Board's report;
- (h) To diversify the business of the company;
- (i) To approve amalgamation, merger or reconstruction;
- (j) To take over a company or acquire a controlling or substantial stake in another company;
- (k) To make political contributions;
- (l) To appoint internal auditors and secretarial auditor;
- (m) 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.

Q73: Can a private company grant loan to its directors?

A73: Sec 185 of the CA 2013 restricts loans to directors including private limited companies. However as per the notification dated 6th Jun 2015, a private company may grant loan to its directors subject to fulfilment of all of the following conditions:

No body corporate has invested in the share capital of the company;

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

There is no subsisting default in repayment of existing borrowings at the time of the transaction.

Q74. Can loan be given by a holding company to its wholly owned subsidiary company or a guarantee given or security provided by a holding company to any loan made to its wholly owned subsidiary?

A74: Yes, as per the proviso to Section 185(1) loan given by a holding company to its wholly owned subsidiary company or a guarantee given or security provided by a holding company in respect of any loan made to its wholly owned subsidiary company is exempt from the purview of Section 185 of CA, 2013 provided the same is utilised for the principal business activities by the subsidiary.

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Q75: Is a private company exempt from Section 186 of CA, 2013?

A75: A private company is not exempt from the applicability of Section 186 of CA, 2013.

Q76: Is loan to an employee covered within the ambit of Section 186 of the CA, 2013?

A76: As per General Clarification No.04/2015 issued by the Ministry of Corporate Affairs dated 10 March 2015, loans and/or advances made by the companies to their employees, other than the managing or who-time director are not governed by the requirement of Section 186 of the CA, 2013. This clarification will however, be applicable if such loans/advances to employees are in accordance with the conditions of service applicable to employees and are also in accordance with the remuneration policy, in cases where such policy is required to be formulated.

Further, as per the Companies (Amendment) Bill, 2016 which is yet to be notified, proposes to exclude 'employees' from the definition of 'any person'.

Q77: Will salary advances made by the Company for only one or two months (without interest) come within the preview of "Loan"?

A77: There is a difference between advance and loan. Loan is lending of money with absolute promise to repay whereas advance is to be adjusted against supply of goods and services. Advance given to employees against current month's salary will not be in the nature of loan and the same will not fall within the purview of Section 186.

Q78: Is unanimous consent of the board required for entering into a transaction under Section 186?

A78: Yes, as per Section 186(5) of the CA, 2013, consent of all the directors present at the meeting is required for entering into a transaction.

Q79: When is the approval from the public financial institutions not required for entering into transactions under Section 186?

A79: As per the proviso to Section 186(5) of the CA, 2013, approval of public financial institutions is not required under the below circumstances:

The amount involved in the transaction does not exceed 60% of the paid up share capital, free reserves and securities

Board Related Matters

premium account and 100% of its free reserves and securities premium account, whichever is higher; and

There is no default in repayment of loan installments and interest to public financial institutions.

Q80: What is the due date for making entries in the new format of Register of Loans, Guarantees, Security and Acquisition? Also, is a company required to update the transactions covered under Section 372A of the CA 1956?

A80: Since, 1 April 2014 it is mandatory for a company to maintain the Register of Loans, Guarantee, Security and Acquisition made by the company in Form MBP-2. Also, as per the clarification issued by MCA vide Circular No. 15/2014, registers maintained by companies pursuant to Section 372A (5) of the CA, 1956 may continue as per the requirement under these provisions and the new format prescribed (MBP-2) shall be used for transactions entered on and from 1 April 2014.

Q81: Which are the transactions covered under Section 188 of the CA, 2013?

A81: 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;

Q82: Can Company provide interest free loans?

A82: No, the Company shall not provide any loan without interest. As per Section 186(7) of the CA, 2013, no loan shall be given at a rate lower than the prevailing yield of one year, three year, five year or ten year Government Security closest to the tenor of the loan.

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Q83: Which are the transactions that would not require approval of the shareholders under Section 188?

A83: As per Section 188(1) of the CA, 2013, following transactions do not require approval of the shareholders under Section 188 of the CA, 2013:

Transactions in ordinary course of business and on arm's length basis;

Transactions between holding company and wholly owned subsidiary company whose accounts are consolidated and laid before shareholders at AGM.

Q84: Can a member of a private company interested in a particular transaction participate and vote at a general meeting?

A84: Yes, an interested member of a private company can participate and vote at general meeting on matters requiring approval for related party transaction pursuant to exemption Notification No. GSR 464(E), dated 05th June, 2015.

Q85: Can a Director who is also a member of a private company participate and vote at a meeting for the transaction related to payment of remuneration to such directors?

A85: Yes, an interested Director who is also a member of a private company can participate and vote at meeting to approve the transactions related to payment of remuneration to such Director.

Q86: In what circumstances is the prior approval of Board required for entering into specified contracts or arrangements with related parties under Section 188?

A86: As per Section 188 of the CA 2013, Board's approval is required for the contracts or arrangements with related parties specified in Section 188(1) (a) to (g) which are either not in ordinary course of business or not at arm's length basis. Further, in the case the transactions exceed the prescribed threshold, prior approval by ordinary resolution of the company shall be required for entering into such contract or arrangement with related party.

Q87: As per the second proviso to Section 188 (1) of the CA, 2013, no member of the company shall vote on such ordinary resolution, to approve any contract or arrangement which may be entered into by the company, if such member is a related party.

What is the meaning of related party in such cases?

Board Related Matters

A87: 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 ordinary 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 ordinary resolution is being passed.

However, as per 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.

Q88: Which are the transactions exempted from being entered in Register of Contracts and Arrangements in which the directors are interested?

A88: The following transactions are exempted from being entered in the Register of Contracts and Arrangements in which the directors are interested:

Sale/purchase/supply of any goods/services, if the value does not exceed five lakh rupees in the aggregate in any year

Transaction by a banking company for the collection of bills in the ordinary course of its business

Q89: Which are the different type of companies required to adopt vigil mechanism?

A89: Pursuant to Section 177(9) of the CA, 2013 read with Rule 7 of the Companies (meetings of Board and its Power) Rules, 2014, 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.

Management and Administration

Q90: When should a company convene its first AGM?

A90: As per Section 96 of the CA, 2013, the first AGM of a company should be held within a period 9 months from the date of close of first financial year.

Example – If a company's financial year ends on 31 March, the first AGM of the company shall be held latest by 31 December of that year.

Q91: Can AGM be held at a place situated outside the limit of city, town or village in which the Registered Office is situated?

A91: As per the provisions of Section 96(2) of the CA, 2013, AGM cannot be held at a place situated outside the limit of city, town or village in which the Registered Office is situated. Provided in case of Government companies, AGM can be held at a place which the Central Government may approve i.e. a Government Company can convene its AGM at a place other than limit of city, town or village in which the Registered Office is situated if the Central Government may approve.

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.

Q92: Can AGM be convened at shorter notice?

A92: Yes, as per Section 101(1) of the CA, 2013, AGM can be convened after giving a shorter notice subject to consent in writing or in electronic mode is received from 95% of the members entitled to vote thereat.

Q93: What shall be the Quorum of an AGM?

A93: As per Section 103 of the CA, 2013, quorum for the AGM of a private limited company is 2 members personally present, but in case of public limited company, quorum for AGM is based on the number of members in the Company, as stated below:

Management and Administration

Quorum required	Total number of member in the Company
(members to be personally present)	
5	Less than 1000
15	1000 to 5000
30	More than 5000

Q94: Can EGM be held at a place situated outside India?

A94: No, EGM of a company cannot be held outside India.

However, as per the proposed Companies Amendment Bill, 2016 which is yet to be notified, EGM of a company, other than a wholly owned subsidiary of a company incorporated outside India, shall be held at a place within India.

Q95: Who can be appointed as proxy?

A95: As per Section 105 of the CA, 2013, proxy need not be a member of the company and any person can be appointed as a proxy.

Q96: What are the restrictions on a proxy during the shareholders meeting?

A96: As per Section 105 of the CA, 2013, at a shareholders meeting, a proxy can vote only through poll and not by show of hands. Also a proxy is not entitled to speak at the meeting.

Q97: Can a member of Section 8 Company appoint any other person as its proxy?

A97: No, as per Rule 19 of Companies (Management and Administration) Rules, 2014, a member of Section 8 Company can appoint only another member of the same company as its proxy.

Q98: For how many members can a person be appointed as a proxy?

A98: As per Section 105 of the CA, 2013, read with Rule 19 of the Companies (Management and Administration) Rules, 2014, a person can act as proxy on behalf of maximum 50 members and holding voting rights on shares not more than 10% of total share capital.

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In case of a person holding proxy for a member, holding voting rights on shares for more than 10% of total share capital, he/she cannot hold a proxy for another member in the same company.

Q99: Can one member appoint more than one proxy?

A99: Yes, a person can appoint more than one proxy.

Q100: When can a proxy be appointed? Can a person be appointed as a permanent proxy for a member?

A100: As per the provisions of Section 105 of the CA, 2013, proxy can be appointed by a member any time after the notice is issued, but the same should reach the company 48 hours before the scheduled meeting. A person cannot be appointed as a permanent proxy for a member.

Q101: Can a director appointed as a Chairman at the meeting of the Board for the purpose of convening such meeting be considered as a person holding the position of Chairman of the Company?

A101: A director appointed as a Chairman at the meeting of the Board for the purpose of convening such meeting cannot be considered as a person holding the position of Chairman of the company. In case a company is willing to designate a director as Chairman of the company, a separate resolution with this effect is required and the necessary intimations shall be given to the ROC.

Q102: What is the period prescribed for preserving the annual returns prepared under the CA, 2013?

A102: Pursuant to Rule 15(3) of the Companies (Management and Administration) Rules, 2014, the Copies of annual returns prepared under Section 92 and copies of all certificates and documents required to be annexed thereto shall be preserved for a period of eight years from the date of filing with the ROC.

Q103: What are the requirements of signing of Annual Return?

A103: Pursuant to the provisions of Section 92 of the CA, 2013 read with Rule 11 of the Companies (Management and Administration) Rules, 2014, annual return shall be signed in the following manner:

- (i) In case of a Small Company and OPC, the annual return shall be signed by Company Secretary or where there is no Company Secretary, by the Director of the Company.

Management and Administration

- (ii) In case of other companies, the annual return shall be signed by a Director and the Company Secretary, or where there is no Company Secretary, by a Practising Company Secretary.

Q104: What are the certification requirements of Annual Return?

A104: Pursuant to Section 92(2) of the CA, 2013 read with Rule 11(2) of the Companies (Management and Administration Rules, 2014, the Annual Return of the following companies shall be certified by a Company Secretary in whole time practice in Form No. MGT-8:

Every listed company;

Every company having paid up share capital of INR 10 crore or more;

Every company having turnover of INR 50 crore or more

Q105: Is the extract of the Annual Return required to be attached to Board's Report in terms of Section 134 (3)(a) of the CA, 2013?

A105: An extract of the annual return in form MGT-9 relating to the financial year to which the Board's Report relates shall be attached therewith in terms of Section 134 (3)(a) of the CA, 2013.

Q106: In case the AGM is not held, what is the time limit for filing the Annual Return?

A106: As per Section 92(4) of the CA, 2013, in case the AGM of a company is not held, the Annual Return has to be filed within 60 days from the last date on which AGM should have been held together with the statement specifying the reasons for not holding the AGM.

Q107: Which registers should include the index of names?

A107: As per Section 88(2) of the CA, 2013, the following registers should include an index of names:

Register of members;

Register of debenture holders;

Register of any other security holders.

Provided that an index is not mandatory if the number of members are less than 50

Q108: What is the duration for preservation of Statutory Registers?

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A108: As per Rule 15 of the Companies (Management and Administration) Rules, 2014, the Statutory Registers are to be preserved in the following manner:

Register of members	:	Permanently
Register of debenture holders & register of any other security holders	:	To be preserved for 8 years from the date of redemption of debenture or securities as the case may be
Foreign Register of members	:	Permanently, unless it is discontinued and all the entries are transferred to any other foreign register or to the principal register
Foreign Register of debenture holders	:	To be preserved for 8 years from the date of redemption of debenture or securities as the case may be

Accounts

Q109: What shall be the first financial year of the newly incorporated company or body corporate?

A109: As per Section 2(41) of the CA, 2013, the first financial year of a company means a period beginning from the date of incorporation and ending on 31 March of the following year.

Q110: In case any existing auditor incurs disqualifications as per the CA 2013, what is the procedure to be followed for appointment of new auditor? Is the company also required to follow the procedures relating to removal of auditor as prescribed in the CA, 2013?

A110: As per Section 141(4) the CA, 2013, an auditor once disqualified shall vacate office and which in turn results in casual vacancy. The casual vacancy can be filled by the board of directors within 30 days of such disqualification and the process relating to removal of Auditors is not required to be followed.

It may be noted that the auditor so appointed holds office only till the conclusion of the next AGM.

Q111: How does the requirement of rotation of auditor apply to a company having a calendar year end or June Year-end?

A111: Appointment/re-appointment of auditor takes place at the AGM and is valid until the conclusion of the next AGM irrespective of the year end. The period of five years will be counted from AGM to AGM.

Q112: Who shall sign the Financial Statements of a Company?

A112: The Financial Statements of a company is required to be signed as per the provisions of Section 134 of the CA, 2013 by:

The chairperson of the company (if he is authorised by the Board) or by two directors (out of which 1 shall be Managing Director/ Chief Executive Officer if any); and

Chief Financial Officer and Company Secretary wherever they are appointed

However, the Companies (Amendment) Bill, 2016 which is yet to be notified, enables Chairperson if he is authorized or two directors out of which one shall be MD, if any and the CEO, the CFO and the

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Company Secretary, wherever they are appointed, to sign the financial statements of the company.

Q113: Can a company maintain books of account in any place other than Registered Office?

A113: As per the provisions of Section 128 of the CA, 2013 read with Rule 2A of the Companies (Accounts) Rules, 2014, a company may maintain books of account and other relevant papers may be kept at such other place in India as the Board of Directors may decide and where such a decision is taken, the company shall, within seven days thereof, file with the ROC a notice in Form AOC-5 giving the full address of that other place.

Q114: If the Notice of the AGM is circulated at a short notice, can the financial statements also be sent along with the notice?

A114: Yes, a company holding a general meeting after giving a short notice as provided under Section 101 of the CA, 2013 may also circulate financial statements at such short notice.

However, the Companies (Amendment) Bill, 2016 which is yet to be notified, proposes to enable the Company to send copy of the financial statements at a period lesser than 21 days if 95% of the members entitled to vote at the meeting agrees for the same.

Q115: What is the duration for preserving the Books of Account?

A115: As per Section 128(5) of the CA 2013, the books of account shall be preserved by the company for 8 financial years preceding the financial year.

Q116: Is it required to attach Board's Report to the consolidated financial statements?

A116: Yes, as per Section 134 (3) of the CA, 2013, the Board's Report shall be attached to the consolidated financial statements.

Q117: Are the standalone financial statements of the associates/joint ventures required to be placed on the website too?

A117: As per fourth proviso to Section 136(1) of the CA 2013, every company having a subsidiary or subsidiaries shall place separate audited accounts in respect of each of its subsidiary on its website, if any. Therefore, there is no requirement of placing standalone financial statements of associates/joint ventures on the website of the company.

However, the Companies (Amendment) Bill, 2016, inserts the following provisions w.r.t foreign subsidiary.

If a Listed Company which has a foreign subsidiary and:

If the foreign subsidiary is statutorily required to prepare consolidated financial statement under the law of any country, the requirement shall be met if such consolidated accounts are placed on the website;

If the foreign subsidiary is not required to audit its financial statements, the Listed Company may place the unaudited financial statement on its website and if the language is not English, a translated copy of the same shall be placed on the website.

Q118: Can a branch office of the company maintain its books of account in the location of branch office?

A118: Yes, as per Section 128(2) the CA, 2013, the Company may maintain books of account relating to the transactions effected at the branch office at branch provided summarised returns are periodically sent to the registered office.

Q 119: Whether the subsidiary of a company under liquidation is required to consolidate its accounts as per Section 129 of the CA, 2013?

A119: Since the holding company under liquidation is not required to have the accounts prepared as per Section 129 the CA, 2013, its subsidiary company's accounts shall not be consolidated with the aforesaid holding company. However, the reasons for not consolidating must be explained in the notes as required by Schedule III.

Q120: Is it required to comply with Accounting Standards while preparing the financial statements?

A120: Yes, as per Section 129(1) of the CA, 2013, the financial statements should be prepared in accordance with the accounting standards. Further, as per Section 129 (5) of the CA, 2013, in case of deviation from accounting standards, the financial statements must disclose the fact of such deviation and reasons for the same along with its financial effects.

Q121: What are the modes available for the company to maintain the books of account?

A121: The Company may maintain books of account either physically or electronically. In case the books of account is maintained

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electronically, the back-up of the books of account and other books and papers of the company shall be kept in servers physically located in India on a periodic basis.

Q122: Can a company keep the books and registers at a place other than registered office of the company?

A122: Yes, as per Proviso to Section 128 (1), the books may be kept at such other place in India as the Board of Directors may decide after passing resolution in the duly held Board Meeting of the company.

Audit and Auditors

Q123: Which companies are required to appoint Internal Auditor?

A123: 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:

listed company;

every unlisted public company having at any point of time during the preceding financial year -

- paid up share capital of INR 50 crores or more; or
 - turnover of INR 200 crores or more; or
 - outstanding loans or borrowings from banks or public financial institutions for more than INR 100 crores; or
 - outstanding deposits of INR 25 crore rupees or more
- every private company having at any point of time during the preceding financial year -
- turnover of INR 200 crores or more; or
 - outstanding loans or borrowings from banks or PFI for more than INR 100 crores

Q124: Who can be appointed as Internal Auditor of the Company?

A124: As per the provisions of Section 138 of the CA, 2013 read with Rule 13 of the Companies (accounts) Rules, 2014, a "Chartered Accountant" or "Cost Accountant" whether engaged in practice or not, or such other professional as may be decided by the Board of Directors of the company can be appointed as internal auditor of the Company. The internal auditor may or may not be an employee of the company.

Q125: Can internal Auditor be appointed by way of a circular resolution?

A125: No, as per Section 179 the CA, 2013 read with applicable rules, Internal Auditor shall be appointed at the duly convened board meeting of the Company.

Q126: Can the Statutory Auditor and Cost Auditor be the same person or firm?

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A126: As per the proviso to the Section 148(3) the CA, 2013, the person appointed under Section 139 the CA, 2013 as an auditor of the company shall not be appointed for conducting the audit of cost records.

Q127: When should the first auditors be appointed?

A127: As per Section 139 of the CA, 2013, the first auditors should be appointed by the Board within 30 days of the registration of the company and in case of failure of the Board to appoint such auditors, the auditors shall be appointed by the members in general meeting. Further, such auditor shall hold office till the date of the conclusion of the first AGM.

Q128: What is the term of appointment of an individual and a firm as a statutory auditor?

A128: As per Section 139(2) the CA, 2013 read with Rule 5 of Companies (Audit and Auditors) Rules, 2014, the following companies shall not appoint an individual as statutory auditor for more than one term of 5 years and a firm as statutory auditor for more than two terms of 5 year each:

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

Q129: Is there any transition period provided for complying with the provisions of Section 139 (2) of the CA, 2013 relating to rotation of auditors?

A129: As per Companies (Removal of Difficulties) Third Order, 2016 dated 30th June, 2016 issued by the MCA, the classes of companies stated under Q128 are required to comply with the provisions of Section 139(2) the CA, 2013 relating to rotation of auditors not later than the AGM to be held in the year 2017.

Q130: Which are the classes of companies required to comply with the provisions relating to rotation of auditors?

A130: As per Section 139(2) of the CA, 2013 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

Q131: In case of Companies which have already appointed auditors in CA, 1956, how should the period of 5 years and 10 years for rotation of auditors be computed?

A131: As per Rule 6(3) of the Companies (Audit and Auditors) Rules, 2014, the period for which the individual or the firm has held office as auditor prior to the commencement of the CA, 2013 shall be taken into consideration for the purpose of rotation of auditors.

For example, in case of listed and prescribed companies, if an individual has completed four years as an auditor on April 01, 2014, he can continue for 3 years in the same company.

Further, if the auditor is required to appointed again, he may do so after the cooling period of five years from the completion of term of five years.

Q132: Can a company remove its auditor?

A132: As per Section 140(1) of the CA, 2013 read with Rule 7 of Companies (Audit and Auditors) Rules, 2014, a company may remove its auditor before the expiry of the term by obtaining prior approval of the Central Government and passing a special resolution in general meeting.

Q133: Is there limit on the number of audits an auditor may undertake?

A133: As per Section 141(3)(g) of the CA, 2013, an auditor cannot undertake audit of more than twenty companies.

In case of private companies, while calculating the limit of 20, one person companies, dormant companies, small companies and private

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companies having paid up share capital less than one hundred crore rupees shall be excluded. [Notification No. GSR 464(E), dated 5th June, 2015]

Q134: Who shall fix the remuneration of Auditors?

A134: As per Section 142(1) of the CA, 2013, the remuneration of the auditor of a company shall be fixed in its general meeting or in such manner as may be determined by the Board of Directors, which shall include any out of pocket expenses incurred for the purpose and in connection with the audit. Provided further, that the Board may fix the remuneration of the first auditor appointed by it.

Q135: Is it the duty of the auditor to confirm on internal financial controls?

A135: As per Section 143(3)(i) of the CA, 2013 the auditor is required to state the adequacy of internal financial control systems and its operating effectiveness.

However, as per the Companies (Amendment) Bill, 2016 which is yet to be notified, it is proposed that the auditors are required to report on Internal Financial Control with reference to financial statements.

Q136: Who shall appoint an auditor of a Government Company?

A136: As per Section 143(5) of the CA, 2013, the auditor of a Government Company shall be appointed by the Comptroller and Auditor General of India ("CAG"). Further, w.e.f. 4th September 2014, auditor of any other company owned or controlled directly or indirectly by Central Government or State Government and partly by Central Government and partly by one or more State Governments shall also be appointed by CAG.

Q137: Which services are not to be rendered by auditor of a company?

A137: As per Section 144 of the CA, 2013, an auditor shall not provide any of the following services:

- (a) Accounting and Book keeping services
- (b) Internal Audit
- (c) Design and implementation of any financial information system
- (d) Actuarial services
- (e) Investment advisory services

- (f) Investment Banking services
- (g) Rendering of outsourced financial services
- (h) Management services

Q138: What are the provisions for Reporting Fraud under CA, 2013?

A138: 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 of 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.

Q139: What is the procedure for reporting of frauds of less than rupees one crore?

A139: As per Rule 13(3) of Companies (Audit and Auditors) Rules, 2014, in case of fraud involving less than one crore rupees, auditor shall report the matter to the Audit Committee under Section 177 of the CA, 2013 or to the Board immediately within 2 days of his knowledge of the fraud and also the same is required to be disclosed in the Board's Report.

Q140: What is the procedure for reporting of fraud under CA, 2013?

A140: As per Section 143 (12) of the CA, 2013 read with Rule 13 of Companies (Audit and Auditors) Rules, 2014, the procedure for reporting of fraud if the amount of the fraud is equal or more than 1 crore, is as follows:

- (i) auditor shall forward his report to the Board or the Audit Committee, as the case may be, immediately after he comes to knowledge of the fraud, seeking their reply or observations within 45 days;
- (ii) on receipt of such reply or observations, the auditor shall forward his report and the reply or observations of the Board or the Audit Committee along with his comments (on such reply or observations of the Board or the Audit Committee) to

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the Central Government within 15 days of receipt of such reply or observations;

- (iii) in case the auditor fails to get any reply or observations from the Board or the Audit Committee within the stipulated period of 45 days, he shall forward his report to the Central Government along with a note containing the details of his report that was earlier forwarded to the Board or the Audit Committee for which he failed to receive any reply or observations within the stipulated time;
- (iv) The report shall be in the form of a statement as specified in Form ADT-4 on the letter-head of the auditor containing postal address, e-mail address, contact number, Membership Number and be signed & sealed by the auditor and same shall be sent through Registered Post with AD/speed post followed by an e-mail in confirmation to the Secretary, MCA of the same.

Q141: Is an auditor required to attend General Meeting?

A141: Yes, as per Section 146 of the CA, 2013, an auditor either by himself or through his representative, who is qualified to be an auditor should attend the general meeting, unless exempted by the company.

Secretarial Audit

Q.142. Who can conduct Secretarial Audit and provide the Report?

A142: Only a member of the Institute of Company Secretaries of India holding a certificate of practice (company secretary in practice) can conduct Secretarial Audit and furnish the Secretarial Audit Report to the company. [Section 204(1) of CA, 2013].

The Secretarial Audit Report should be signed by the Secretarial Auditor who has been engaged by the company to conduct the Secretarial Audit and in case of a firm of Company Secretaries, by the partner under whose supervision the Secretarial Audit was conducted.

Q143: Which companies are required to undergo Secretarial Audit?

A143: As per Section 204(1) of the 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)]

Q144: Whether the Secretarial Audit is voluntary or mandatory as per the provisions of CA, 2013?

A144: Pursuant to the provisions of Section 204 of the CA 2013, it is mandatory for every listed company and company belonging to class of companies as prescribed under Question No. 143 to annex with its Board's Report, a Secretarial Audit Report given by a Company Secretary in Practice.

In case of companies which are not covered under Section 204 of the CA, 2013, it may obtain Secretarial Audit Report voluntarily.

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Q145: What is the format of Secretarial Audit Report?

A145: As per Section 204(1) of the CA, 2013 read with Rule 9 of the Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014, Secretarial Audit Report is required to be provided in the format prescribed in Form MR-3.

Q146: Is Secretarial Auditor entitled to receive notice of AGM in which his report is to be laid before the members?

A146: As per Secretarial Standard 2, the notice in writing of every general meeting shall be given to every member of the company as well as to the Directors, Auditors and to the Secretarial Auditor and Debenture Trustees, if any.

Q147: Is Secretarial Audit applicable to a private company which is a subsidiary of a public company?

A147: Yes, as per proviso to Section 2(71) of the CA, 2013, the company which is a subsidiary of a company, not being a private company, shall be deemed to be a public company for the purposes of this Act, even where such subsidiary company continues to be a private company in its articles.

Given the above, Secretarial Audit would be applicable to a private company which is a subsidiary of a public company if the prescribed criteria of the paid up share capital or turnover is met.

Q148. What are events and actions required to be reported by the Secretarial Auditor in the audit report?

A148: Secretarial Auditor is required to report and provide details of specific events and actions occurred during the reporting period having major bearing on the affairs of the Company in pursuant to above referred laws/ rules and regulations. Few events are also given as example in the format of audit report.

Q149: Can a Practicing Company Secretary certify the Annual Return with qualification?

A149: A Practicing Company Secretary can certify the Annual Return subject to certain reservations/qualifications by way of an annexure to his certificate.

Q150: How is the Secretarial Auditor appointed?

A150: As per Rule 8 of the Companies (Meetings of Board and its powers) Rules, 2014, Secretarial Auditor is required to be appointed by means of resolution passed at a duly convened Board meeting.

Q151: Whether communication to earlier incumbent is required?

A151: Yes, whenever a practicing company secretary is appointed as Secretarial Auditor in place of the existing Secretarial Auditor, he/she should communicate the appointment to the earlier incumbent in writing, in view of the provisions of clause (8) of Part I of the First Schedule to the Company Secretaries Act, 1980.

Deposits

Q152: Can a Private Company accept deposit from its members without complying with the provisions applicable to deposits?

A152: Yes, as per the exemption Notification No. GSR 464(E) of the MCA dated 5th June 2015, a Private Company can accept deposits from its members not exceeding 100% of aggregate of its paid up share capital and free reserve without complying with the provisions of Section 73(2) (a), (b), (c), (d) and (e) of the CA, 2013 and such company shall file details of monies so accepted in the manner as may be specified.

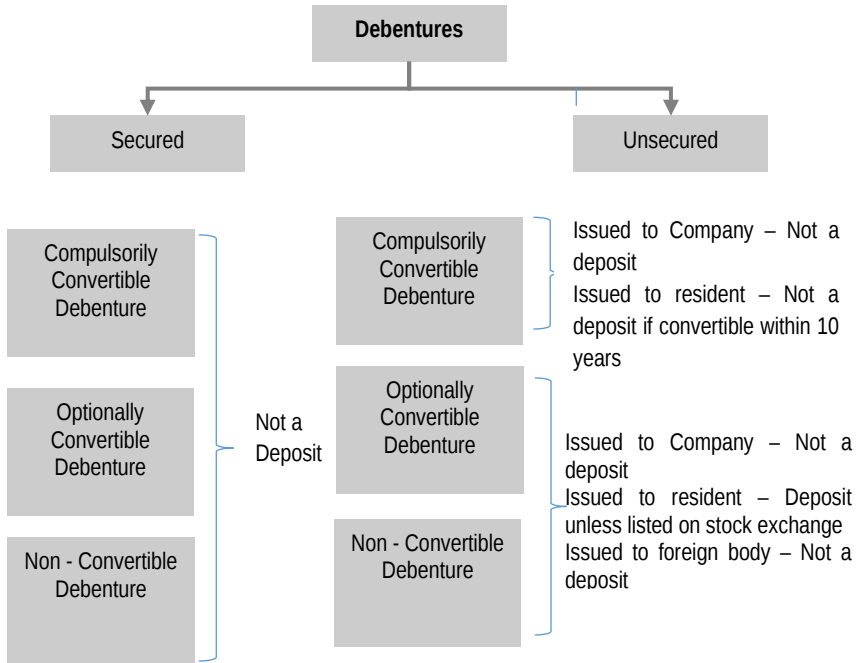
Q153: What is an “eligible company” for the purpose of deposit?

A153: “Eligible company” refers to every public company having net worth of not less than INR 100 crore rupees or a turnover of not less than INR 500 crore rupees and which has obtained prior consent of shareholders in general meeting by means of a special resolution and made respective filings with the ROC before making any invitation to public.

In case, deposit is with respect to the specified limits under Section 180(1)(c) of the CA, 2013, an ordinary resolution may suffice the requirement.

Q154. Does Deposit provisions cover debenture?

A154:



Dividend

Q155: Will advance towards annual maintenance service for more than 365 days be treated as a deposit?

A155: Yes, as per the Companies (Acceptance of Deposits) Rules, 2014, advance towards annual maintenance service for more than 365 days will be treated as a deposit

Q156: Is share application money pending allotment for more than 60 days treated as a deposit?

A156: Yes, as per the Companies (Acceptance of Deposits) Rules, 2014, share application money pending allotment for more than 60 days is treated as a deposit.

Q157: 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?

A157: 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.

In case of private company, if the amount is borrowed from its member not exceeding 100% of the paid-up share capital and free reserves of the company, then it will not be treated as deposits.
[Notification No. GSR 464E, dated 5th June, 2015]

Q158: Is it mandatory for a company to declare dividend?

A158: No, it is not mandatory for a company to declare dividend.

Q159: In case a company declares dividend, what shall be the last date of payment of dividend?

A159: The dividend warrants shall be dispatched by the company-

- (i) in case of Interim Dividend- within 30 days of declaration of dividend in the Board Meeting; and
- (ii) in case of final dividend- within 30 days of its approval in the AGM.

In case of ECS transfers for distribution of dividend, the transfer shall be made within 30 days of declaration of dividend.

Q160: Can a company which has inadequate profits or has incurred loss in the immediately preceding financial year declare final dividend out of the accumulated profits of the previous financial years? Also, is there any restriction on the rate of dividend?

A160: As per the second proviso to Section 123(1) of the CA, 2013, a company which has inadequate profit or has incurred loss in the immediately preceding financial year may declare dividend out of the accumulated profits of the company. However, as per Rule 3 of Companies (Declaration and Payment of Dividend) Rules, 2014, the rate of dividend shall not exceed the average of the rates at which dividend was declared by the company in the immediately preceding three financial years.

If a company has not declared dividend in any of the preceding three financial years, the restriction on the rate of dividend would not be applicable.

Q161: Can Board of Directors declare final dividend for the financial year?

A161: The Board can only recommend the final dividend to the shareholders of the Company for declaration at the AGM.

Q162: Can dividend be declared to certain class of shareholders only?

A162: Dividend can be paid to any class of shareholders, but separate resolution for declaration of dividend to each class of shares is required to be passed at the meeting of the Board or shareholders, as the case may be.

Q163: Can dividend be paid to certain shareholders of the same class?

A163: Dividend once declared has to be paid to all the shareholders in a particular class.

Q164: Can a shareholder whose shares have been transferred to IEPF claim back his shares?

A164: As per proviso to Section 124(6) of the CA, 2013 claimant of shares shall be entitled to claim the transferred shares from IEPF and the procedure for that would be specified in the IEPF Rules.

Q165: When is unpaid/ unclaimed dividend transferred to Unpaid Dividend Account?

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A165: As per Section 124(1) of the CA, 2013, dividend declared by the company which remains unpaid/ unclaimed for a period of 30 days from the date of declaration shall be transferred to Unpaid Dividend Account within 7 days from the date of expiry of the said period of 30 days.

Corporate Social Responsibility

Q166: Whether provisions governing CSR are applicable to private Companies?

A166: Yes, every company irrespective of Private or Public Limited or a foreign company having its branch office or project office in India 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.

Q167: In which activities can a company contribute towards CSR?

A167: The amount allocated for CSR can be spent for activities specified under Schedule VII of the CA, 2013.

Q168: Are there any implications of not spending the 2% of average net profits as CSR expenditure?

168: In case of any shortfall of not spending the 2% of average net profits, the Board is required to be disclosed the same in the Board report along with reasons thereof.

Compromise and Arrangements

Q169: What are the applicable provisions for carrying out Compromise and arrangements?

A169: Compromise and Arrangement between company and its creditors or company and its members shall be done in accordance with the provisions of the CA, 2013.

(MCA vide notification dated 7 December 2016 notified the Section 230 to 240 of the CA, 2013 which deal with Compromise and Arrangements)

Q170: Who are eligible to raise objections to the scheme of compromise and arrangement?

A170: As per the proviso to Section 230(4) of the CA, 2013, objection can be raised only by persons holding 10% or more of shareholding or having debt amounting 5% of the total outstanding debt as per the latest audited financial statement.

Q171: How do we calculate the 'shareholding' and 'outstanding debt' while ascertaining the eligibility to object to the scheme?

A171: As per Explanation to Rule 9 of the Companies (Compromise, Arrangements and Amalgamations) Rules, 2016:

'Shareholding' means the shareholding of the members of the class who are entitled to vote on the proposal and

'Outstanding debt' shall mean all debt owed by the company to the respective class or classes of creditors that remains outstanding as per the latest audited financial statement, or if such statement is more than six months old, as per provisional financial statement not preceding the date of application by more than six months.

Q172: What is Corporate Debt Restructuring?

A172: As per explanation to the rule 4 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016, corporate debt restructuring means a scheme that restructures or varies the debt obligations of a company towards its creditors.

Q173: Under what circumstances the meeting of the creditors may be dispensed by the NCLT?

Compromise and Arrangements

A173: As per Section 230(9) of the CA, 2013, if 90% of the creditors in value agree and confirm to the scheme by way of affidavit, NCLT may dispense the holding of meeting of creditors or class of creditors.

Q174: Do we have to comply with Section 230 and Section 232 while carrying out the merger and amalgamation of two or more small companies or between holding and wholly owned subsidiary companies?

A174: No, Section 233 of the CA, 2013 prescribes to regulate the merger and amalgamation between two or more small companies or between holding and wholly owned subsidiary companies. The powers with regard to the same have been delegated to the Regional Director.

Q175: For how many years the books and papers of amalgamated companies shall be preserved?

A175: The CA, 2013 does not prescribe any period for preservation of books and papers. However, books and papers of amalgamated companies shall not be destroyed without the approval of the Central Government.

Q176: What happens in case of merger of listed transferor company into unlisted transferee company?

A176: As per Section 232(3)(h) of CA, 2013, where the transferor company is a listed company and the transferee company is an unlisted company, then:

- (i) the transferee company shall remain an unlisted company until it becomes a listed company.
- (ii) If shareholders of the transferor company decide to opt out of the transferee company, provision shall be made for payment of the value of shares held by them and other benefits in accordance with a pre-determined price formula or after valuation is made and the arrangements may be made by the NCLT.

Q177: Can Company buy back its shares under a scheme of arrangement without following the conditions prescribed under Section 68 of the CA, 2013?

A177: No, as per Section 230(10) of the CA, 2013, NCLT shall not approve any scheme of compromise or arrangement in respect of buy-back of securities which is not in compliance with the provisions of Section 68 of the CA, 2013.

Annexure “A”

List of Sections of Companies Act 2013 that has been notified and enforced by the Ministry of Corporate Affairs as on 30th January, 2017

Chapters	Sections Notified
Chapter 1 Preliminary	Section 1- Short title, extent, commencement and application (Notified on 12 th September, 2013) Definitions Section 2 (1)- Abridged prospectus (Notified on 12 th September, 2013) Section 2 (2)- Accounting Standards (Notified on 1 st April, 2014) Section 2 (3)- Alter” or “Alteration (Notified on 12 th September, 2013) Section 2 (4)- Appellate Tribunal (Notified on 12 th September, 2013) Section 2 (5)- Articles (Notified on 12 th September, 2013) Section 2 (6)- Associate company (Notified on 12 th September, 2013) Section 2 (7)- Auditing Standards (Notified on 1 st April,2014) Section 2 (8)- Authorised capital (Notified on 12 th September, 2013) Section 2 (9)- Banking company (Notified on 12 th September, 2013) Section 2 (10)- Board of Directors “Board” (Notified on 12 th September, 2013) Section 2 (11)- Body Corporate or Corporation (Notified on 12 th September, 2013) Section 2 (12)- Book and Paper and Book or Paper

	(Notified on 12 th September, 2013)
	Section 2 (13)- Books of Account
	(Notified on 1 st April, 2014)
	Section 2 (14)- Branch Office
	(Notified on 12 th September, 2013)
	Section 2 (15)- Called up Capital
	(Notified on 12 th September, 2013)
	Section 2 (16)- Charge
	(Notified on 12 th September, 2013)
	Section 2 (17)- Chartered Accountant
	(Notified on 12 th September, 2013)
	Section 2 (18)- Chief Executive Officer
	(Notified on 12 th September, 2013)
	Section 2 (19)- Chief Financial Officer
	(Notified on 12 th September, 2013)
	Section 2 (20)- Company
	(Notified on 12 th September, 2013)
	Section 2 (21)- Company limited by Guarantee
	(Notified on 12 th September, 2013)
	Section 2 (22)- Company limited by shares
	(Notified on 12 th September, 2013)
	Section 2 (23)- Company Liquidator
	(Notified on 15 th December, 2016)
	Section 2 (24)- "Company Secretary" or "Secretary"
	(Notified on 12 th September, 2013)
	Section 2 (25)- Company Secretary in Practice
	(Notified on 12 th September, 2013)
	Section 2 (26)- Contributory
	(Notified on 12 th September, 2013)
	Section 2 (27)- Control
	(Notified on 12 th September, 2013)
	Section 2 (28)- Cost Accountant
	(Notified on 12 th September, 2013)
	Section 2 (29)- Court
	(Notified on 12 th September, 2013)

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	Section 2 (30)- Debenture (Notified on 12 th September, 2013)
	Section 2 (31)- Deposit (Notified on 1 st April, 2014)
	Section 2 (32)- Depository (Notified on 12 th September, 2013)
	Section 2 (33)- Derivative (Notified on 12 th September, 2013)
	Section 2 (34)- Director (Notified on 12 th September, 2013)
	Section 2 (35)- Dividend (Notified on 12 th September, 2013)
	Section 2 (36)- Document (Notified on 12 th September, 2013)
	Section 2 (37)- Employees' Stock Option (Notified on 12 th September, 2013)
	Section 2 (38)- Expert (Notified on 12 th September, 2013)
	Section 2 (39)- Financial Institution (Notified on 12 th September, 2013)
	Section 2 (40)- Financial Statement (Notified on 12 th September, 2013)
	Section 2 (41)- Financial Year (Except 1 st proviso) (Notified on 1 st April, 2014)
	Section 2 (42)- Foreign Company (Notified on 1 st April, 2014)
	Section 2 (43)- Free Reserves (Notified on 12 th September, 2013)
	Section 2 (44)- Global Depository Receipt (Notified on 12 th September, 2013)
	Section 2 (45)- Government company (Notified on 12 th September, 2013)
	Section 2 (46)- Holding Company (Notified on 12 th September, 2013)
	Section 2 (47)- Independent Director

	(Notified on 1 st April, 2014)
	Section 2 (48)- Indian Depository Receipt
	(Notified on 1 st April, 2014)
	Section 2 (49)- Interested Director
	(Notified on 12 th September, 2013)
	Section 2 (50)- Issued Capital
	(Notified on 12 th September, 2013)
	Section 2 (51)- Key Managerial Personnel
	(Notified on 12 th September, 2013)
	Section 2 (52)- Listed Company
	(Notified on 12 th September, 2013)
	Section 2 (53)- Manager
	(Notified on 12 th September, 2013)
	Section 2 (54)- Managing Director
	(Notified on 12 th September, 2013)
	Section 2 (55)- Member
	(Notified on 12 th September, 2013)
	Section 2 (56)- Memorandum
	(Notified on 12 th September, 2013)
	Section 2 (57)- Net Worth (modified)-
	(Notified on 12 th September, 2013)
	Section 2 (58)- Notification
	(Notified on 12 th September, 2013)
	Section 2 (59)- Officer
	(Notified on 12 th September, 2013)
	Section 2 (60)- Officer who is in default
	(Notified on 12 th September, 2013)
	Section 2 (61)- Official Liquidator
	(Notified on 12 th September, 2013)
	Section 2 (62)- One Person Company
	(Notified on 1 st April, 2014)
	Section 2 (63)- Ordinary or Special Resolution
	(Notified on 12 th September, 2013)
	Section 2 (64)- Paid- up Share Capital
	(Notified on 12 th September, 2013)

Frequently Asked Questions on The Companies Act, 2013

	Section 2 (65)- Postal Ballot (Notified on 12 th September, 2013)
	Section 2 (66)- Prescribed (Notified on 12 th September, 2013)
	Section 2 (67)- Previous Company Law (Except Sub clause (ix)) (Notified on 12 th September, 2013)
	Section 2 (68)- Private Company (Notified on 12 th September, 2013)
	Section 2 (69)- Promoter (Notified on 12 th September, 2013)
	Section 2 (70)- Prospectus (Notified on 12 th September, 2013)
	Section 2 (71)- Public Company (Notified on 12 th September, 2013)
	Section 2 (72)- Public Financial Institution (Notified on 12 th September, 2013)
	Section 2 (73)- Recognised Stock Exchange (Notified on 12 th September, 2013)
	Section 2 (74)- Register of Companies (Notified on 12 th September, 2013)
	Section 2 (75)- Registrar (Notified on 12 th September, 2013)
	Section 2 (76)- Related Party (Notified on 12 th September, 2013)
	Section 2 (77)- Relative (Notified on 12 th September, 2013)
	Section 2 (78)- Remuneration (Notified on 12 th September, 2013)
	Section 2 (79)- Schedule (Notified on 12 th September, 2013)
	Section 2 (80)- Scheduled Bank (Notified on 12 th September, 2013)
	Section 2 (81)- Securities (Notified on 12 th September, 2013)
	Section 2 (82)- Securities and Exchange Board

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ISBN : 978-81-8441-858-3



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09CLCGC020

January/2017/P0000 (New)