

SEBI GRADE A

Companies Act

Corporate Governance under
Companies Act 2013



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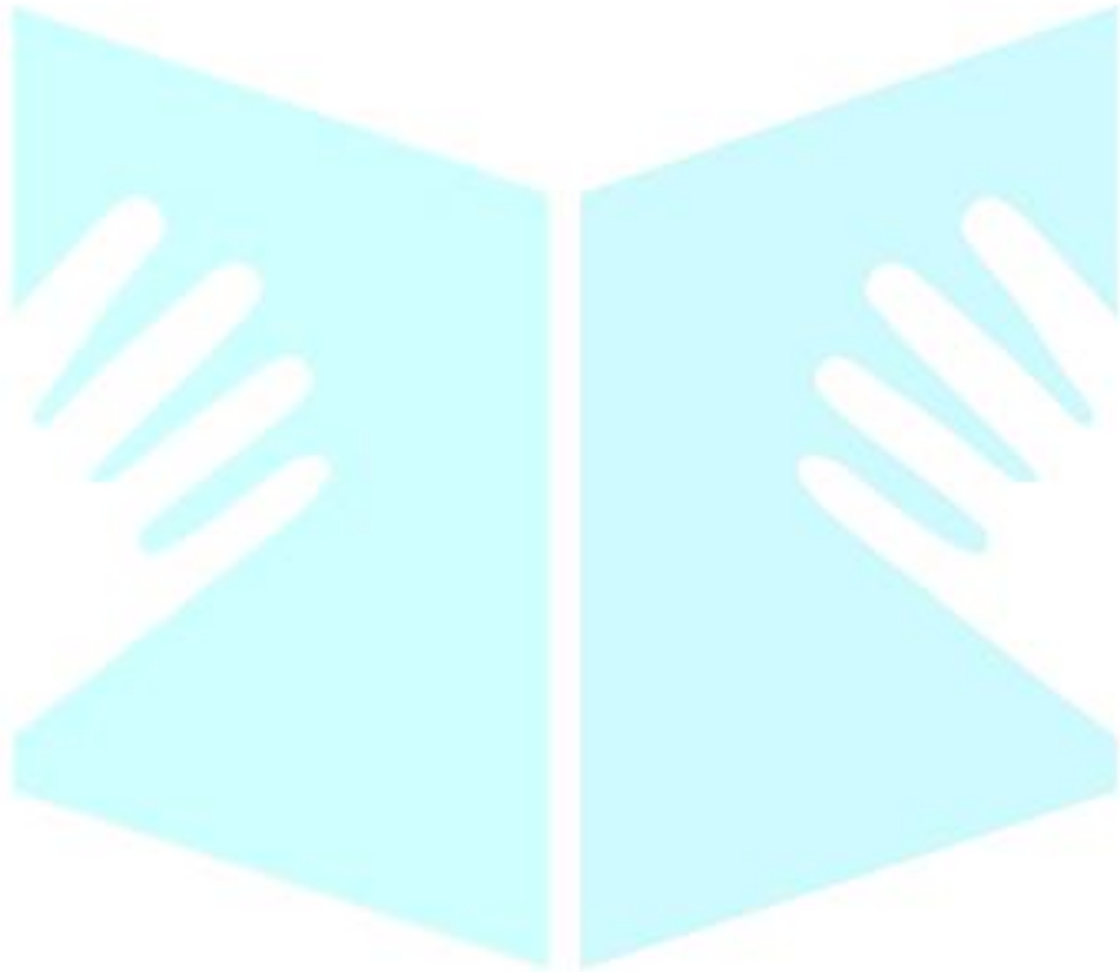
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Contents

1.1 Introduction.....2

1.2 Key features of corporate governance in Companies Act, 20132



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1.1 Introduction

The corporate governance is implied for the management of the business in a responsible manner with committed ethics and to maintain the transparency by which the confidence of all the related and interested parties can be sustained. The Companies Act, 2013, passed by the parliament open the new company law regime in India which replaces the more than 50-year-old law of company (the Companies Act, 1956). The present Act seeks to provide more transparency and enhanced mechanism for the management of corporate affairs.



1.2 Key features of corporate governance in Companies Act, 2013

There has been a sea change in companies Act, 2013 which has waved its way from principle of corporate governance practices as the new key change in the act. The Companies Act, 2013 has taken a foot forward from SEBI's Clause 49 of listing agreement by introducing provisions in the companies act 2013 which promotes corporate governorship code in such a manner that it will no longer be restricted to only listed public companies but also unlisted public companies. Companies Act, 2013 lays greater emphasis on corporate governance as it clearly provides the rules and regulations for the same.

Some of the provisions of the Companies Act, 2013 are discussed below:

1. Board of Directors



Board of directors is the decision-making body of any company. It is the duty of the board to comply with all legal rules and regulations. So, it is very important that a company constitutes a board of directors as per the provisions of Companies Act, 2103.

Composition of Board- Section 149 of the Companies Act, 2013 provides for appointment of minimum three directors in a public company and two directors in a private company. A board can have a maximum of fifteen directors but can appoint more directors subject to special approval.

Women Director- It is mandatory to appoint a women director in the following classes of company:

- Listed company.
- Public unlisted company having paid-up share capital of **one hundred crore rupees** or more or having a turnover of **300 crore or more**.

Resident Director- Section 149(3) mandates that every company will have one director who has stayed in India for a period of not less than **182 days**.

Independent Director- Independent directors are impartial and bring expertise to the board. They play an important role in resolving conflicts among shareholders and the company. **Section 149(6)** provides for the qualifications for appointing an independent director in a public company. As per Companies Act, 2013 public listed company shall have at least one-third of directors as independent directors and public unlisted company will have two directors if they meet the following criteria:

- Public companies having a share capital of **10 crore or more**.
- Public companies having a turnover of **100 crore or more**.
- Public companies having outstanding loans, debentures and deposits of **more than 50 crores**.

According to **section 134** of Companies Act, 2013 the director has to give a detailed financial report which includes the director's responsibility statement. This provision has been enacted to make directors accountable for their actions.

2. Stakeholder Relationship Committee

As per **section 178(6)** of Companies Act, 2013, if a company has more than **one thousand** shareholders, debenture-holders, deposit-holders or any other security holders in a financial year then it is mandatory to constitute a stakeholder relationship committee. The main of the committee

is to resolve the conflicts between the shareholders and the board of directors and address their grievances. The chairperson of the board shall be a non-executive director.

3. Audit Committee

Audit Committee



The Audit Committee looks after the financial reports and disclosures of a company. It is one of the most important components of a corporate governance structure. Under **section 177** of Companies Act, 2013 the following class of companies are required to constitute audit committee and they are as follows:

- Listed company
- Public company having a share capital of more than **10 crores**.
- Public company having a turnover of Rs. **100 crores**.
- Public companies having deposits, outstanding loans or debentures more than 50 crores.

An audit committee will consist of a minimum of 3 directors and independent directors will form the majority. **Section 177(4)** provides duties of the audit committee, and it has to act in accordance with the same.

4. Internal Audit

Companies Act, 2013 has mandated the internal audit for certain classes of companies as specified under Section 138 of the Companies Act, 2013.

5. Serious Fraud Investigation Office (SFIO)



Section 211 (1) of the Companies Act, 2013 shall establish an office called the Serious Fraud Investigation office to investigate fraud relating to Company. The powers are given to SFIO under the act as mentioned that he can investigate into the affairs of the company or on receipt of report of Registrar or inspector or in the public interest or request from any Department of Central Government or State Government.

6. Nomination and Remuneration Committee



The nomination and remuneration committee decides the selection criteria for the key managerial personnel (KMP) and determines the remuneration of the KMP's and directors. **Section 178** of Companies Act, 2013 mandates the constitution of committee for the following class of companies:

- Listed company.
- Public company having a share capital of more than Rs. **10 crores**.
- Public company having a turnover of Rs. **100 crores**.
- Public company having deposits, outstanding loans or debentures more than **Rs.50 crores**.

The nomination and remuneration committee will consist of a **minimum of 3 directors** and independent directors will form the majority.

7. Corporate Social Responsibility



The concept of CSR rests on the good corporate citizenship where corporate contributions to the societal growth as a part of their corporate responsibility for utilizing the resources of the society for their productive use.

Ministry of Corporate Affairs has recently notified **Section 135 and Schedule VII** of the Companies Act as well as the provisions of (CRS Rules) which has come into effect from 1 April 2014.

Applicability

Section 135 of the Companies Act provides the threshold limit for applicability of the CSR to a Company:

1. Net worth of the company to be **Rs 500 crore or more**.
2. Turnover of the company to be **Rs 1000 crore or more**.
3. Net profit of the company to be **Rs 5 crore or more**.

Further, as per the CSR Rules, the provisions of CSR are not only applicable to Indian companies but also applicable to branch offices of a foreign company in India.

CSR Committee and Policy

Every company as prescribed in **Section 135** of the Act and Company (Corporate Responsibility) Rules, 2014 within the threshold limit requires spending of **at least 2%** of its average net profit for the immediately **preceding 3 financial years** on CSR activities.

Further, the company will be required to constitute a committee (CSR Committee) of the Board of Directors (Board) consisting of 3 or more directors.

The CSR Committee shall formulate and recommend to the Board, a policy which shall indicate the activities to be undertaken (CSR Policy); recommend the amount of expenditure to be incurred on the activities referred and monitor the CSR Policy of the company. The Board shall take into account the recommendations made by the CSR Committee and approve the CSR Policy of the company.

The new CSR regime is based on “Comply or explain” approach to stringently push big corporate giants to take initiative towards their duty to contribute towards their CSR activities. Companies failing to do so would be required to explain why they have not included such information, in the annual report as under Section 92 of the Companies Act, 2013 as part of “comply or explain” approach for large companies.

8. Related Party Transactions



A business transaction with relatives of Directors or KMP is considered as Related Party Transactions. It is very important to scrutinize transactions with related parties. Related party transactions are not banned in India and it can be entered by a company. There are certain conditions which need to be fulfilled before entering into a related party transaction as per **Section 188 of Companies Act, 2013**.

9. Class Action Suits



Class action suits allow a group of aggrieved people with the same grievance to file a collective suit against the company. It allows the minority shareholders to file a suit against the company and its management in the **National Company Law tribunal (NCLT)**. **Section 245** of Companies Act, 2013

allows suit to be initiated against its directors, management, auditors and any other person who is responsible for fraudulent, unlawful or wrongful act.

2 Concept Check

1. A company having minimum turnover of ` ----- crores is required to constitute a Nomination and Remuneration Committee.
 - A. 25
 - B. 50
 - C. 100
 - D. 200

Answer is C

2. On what grounds, Central Government can order Investigation by SFIO?
 - A. In the Public interest
 - B. On receipt of a report of the Registrar under section 208
 - C. On intimation of a Special Resolution by a company that its affairs are required to be investigated
 - D. All of the above

Answer is D.

3. The Companies Act, 2013 has formulated Section ____, Companies (Corporate Social Responsibility) Rules, 2014 and Schedule VII which prescribes mandatory provisions for Companies to fulfil their CSR.
 - A. 135
 - B. 137
 - C. 144
 - D. 178

Answer is A

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