

RNM SPECIAL ISSUE



The Ministry of Corporate Affairs has notified 98 sections in the Companies Act, 2013 to be effective from 12th day of September, 2013 and simultaneously Sections dealing with these issues under the Old Companies Act cease to be effective.

The important highlights of the same are attached for ready reference.

However, one of the major highlights in the aforesaid 98 notified sections is section 185 (corresponding to section 295 of Companies Act, 1956) which completely prohibits every Company from directly or indirectly advancing a loan, including any loan represented by a book debt, to any of its directors or to any other person in whom the director is interested or give any guarantee or provide any security in connection with any loan taken by him or such other person. The meaning of person in whom Director is interested has also been defined in the said Section clarified in the attachment.

Important Notified sections (out of the total 98 notified sections)	Particulars	Corresponding sections of the Companies Act, 1956	Comments
2 (12)	book and paper and book or paper	2 (8)	It enables maintaining of books, deeds, documents, registers, minutes etc. in electronic or prescribed form.
2 (27)	Control	NA	<p><i>New Definition</i></p> <p>Control shall include the right to appoint majority of the directors or to control the management or policy decisions exercisable by a person or persons acting individually or in concert, directly or indirectly, including by virtue of their shareholding or management rights or shareholders agreements or voting agreements or in any other manner.</p> <p>As the definition of control is inclusive one, the ordinary meaning of control is important. A control, according to the definition, is a proactive and not a reactive power.</p>
2 (37)	Employees' Stock Option	2 (15A)	Now the definition also covers ESOPs given to directors (whole-time as well as part time), officers and employees of holding company or subsidiary company or companies.
2 (51)	Key Managerial Personnel (KMP)	NA	<p><i>New Definition</i></p> <p>Key Managerial Personnel in relation to a company, means-</p> <ul style="list-style-type: none"> (i) The Chief Executive Officer or the Managing Director or the Manager; (ii) The Company Secretary; (iii) The Whole-time Director; (iv) The Chief Financial Officer; and (v) Such other officer as may be prescribed;
2 (54)	Managing Director	2 (26)	Unlike the 1956 Act, the 2013 Act does not require that a managing director of a company shall exercise his powers subject to the superintendence, control and direction of its

			board of directors
2 (60)	Officer who is on default	2 (31), 5 and 7	Definition modified & scope has been widened. Unlike the 1956 Act, the 2013 Act provides that share transfer agents, registrars and merchant bankers to the issue or transfer shall be regarded as officers in default in respect of issue or transfer of any shares of a company.
2 (68)	Private Company	2 (35) and 3	Number of members have been increased from 50 to 200 and restriction to invite public to subscribe shares or debentures has been extended to include all type of securities
2 (71)	Public Company	2 (37) and 3	It has been clearly provided that subsidiary of public company shall be deemed to be public company even if it continue to be private company in its Articles.
2 (76)	Related Party	NA	<p><i>New Definition</i></p> <p>Related party with reference to a company, means-</p> <ul style="list-style-type: none"> (i) A director or his relative; (ii) A key managerial personnel or his relative; (iii) A firm, in which a director, manager or his relative is a partner; (iv) A private company in which a director or manager is a member or director; (v) A public company in which a director or manager is a director or holds along with his relatives, more than 2% of its paid-up share capital; (vi) Any body corporate whose board of directors, managing director or manager is accustomed to act in accordance with the advice, directions or instructions of a director or manager; (vii) Any person on whose advice, directions or instructions a director or manager is accustomed to act: <p style="text-align: center;"><i>Provided that nothing in sub-clause (vi) and (vii) shall apply to the advice, directions or instructions given in a professional capacity;</i></p> <ul style="list-style-type: none"> (viii) Any company which is- <ul style="list-style-type: none"> (A) A holding, subsidiary or an associate company of such company; or

			<p>(B) A subsidiary of a holding company to which it is also a subsidiary.</p> <p>(ix) Such other person as may be prescribed;</p>
2 (87)	Subsidiary Company or Subsidiary	2 (19), 2(47) and 4	<p>Unlike the 1956 Act, the 2013 Act does not exclude shares (i.e. voting power) held in fiduciary capacity, shares held under provisions of debentures and shares held as security by a Company whose business includes money lending, in reckoning whether a Company controls 50% or more voting power in another Company.</p> <p>Unlike the 1956 Act, the 2013 Act does not provide when Indian private companies which are subsidiaries of foreign companies shall be treated as subsidiaries of public companies.</p> <p>The 2013 Act introduces a new requirement. Such class or classes of holding companies as may be prescribed shall not have layers of subsidiaries beyond such numbers as may be prescribed. Layer in relation to a holding company means its subsidiary or subsidiaries.</p> <p>The proviso and explanation (d) is not notified</p>
29	Public Offer of securities to be in dematerialized form	68B	<p>Under the New Act every company making public offer and other prescribed class of public companies will have to issue Securities only in dematerialized form by complying with the provisions of the Depositories Act, 1996 and the regulations made there under. Other companies may convert their securities in dematerialized form or issue its securities in physical form.</p>
37	Action by affected persons	NA	<p>New Provisions</p> <p>A suit may be filed or any other action may be taken under section 34 (Criminal Liability for mis-statements in prospectus) or section 35 (Civil Liability for mis-statements in prospectus) or section 36 (Punishment for fraudulently inducing persons to invest money) by any person, group of persons or any association of persons affected by any misleading statement or the inclusion or omission of any matter in the prospectus.</p>
39	Allotment of securities by Company	69 and 75	<p>Unlike the 1956 Act, the 2013 Act applies to allotment of all securities offered to public for subscription.</p>

			<p>Minimum 5% of nominal value payable with application under the 1956 Act. The 2013 Act stipulates that minimum application is 5% of the nominal amount of the security or such other percentage or amount as may be specified by SEBI by making regulations. Section 69 of the 1956 Act was applicable to public and private companies. Section 39 of the 2013 Act is applicable to public offer only, which can be made by public companies only.</p> <p>The 2013 Act provides for refunds if stated minimum subscription not received within 30 days from the date of issue of prospectus or such other period as may be specified by SEBI. Earlier the time limit was 120 days.</p> <p>However, sub-section 4 is not notified yet</p>
58	Refusal of Registration and appeal against refusal	111 and 111A	<p>2013 Act clarifies that any contract or arrangement between two or more persons in respect of transfer of securities shall be enforceable as a contract.</p> <p>The time-limit for sending notice of refusal of registration by private company has been reduced from 2 months to 30 days.</p> <p>The time-limit for filing appeal against refusal of registration was 2 months of the receipt of the notice of such refusal in the 1956 Act. This time-limit now has been reduced to 30 days. Where no notice of refusal was sent by company, the time-limit for filing appeal against refusal was 4 months under the 1956 Act. This time-limit now has been reduced to 60 days.</p> <p>The time-limit for registration of transfer (unless there is sufficient cause) by a public company was 2 months from the date on which the instrument of transfer or the intimation of transfer, as the case may be, is delivered to the company. The time-limit now has been reduced to 30 days.</p> <p>There was no time-limit for filing appeal against public company not registering transfer of shares without sufficient case under the 1956 Act. The 2013 Act requires appeal to be filed within 60 days of refusal and where no intimation of refusal received from company, within 90 days of date of delivery of instrument of transfer.</p>

			<p>Under the 1956 Act, on appeal being filed against non-registration of transfer of shares by a public company without sufficient cause within 2 months from the date on which the instrument was delivered to the company, the CLB was required to direct registration. There is no such compulsion on the Tribunal under the 2013 Act.</p> <p><i>However as per the MCA Notification dated 20th September, 2013, until a date is notified by Central Government for transfer of all matters, proceedings or cases to the Tribunal, CLB shall continue to exercise the powers.</i></p>
70	Prohibition for buy-back in certain circumstances	77B	<p>The 2013 Act provides that prohibition on buy-back to continue for till 3 years after specified default(s) remedied. Under the 1956 Act, prohibition on buy-back ceased immediately when default ceased to subsist.</p> <p>However, sub-section 2 is not notified yet.</p>
100	Calling of EGM	169 and Regulation 48(1) of Table A of Schedule I	<p>The 2013 Act omits the provision regarding signing of requisition by joint holders.</p> <p>However, sub-section 6 is not notified yet.</p>
102	Statement to be annexed to Notice	173	<p>While section 173 of the 1956 Act did not define or clarify what facts are 'material facts', section 102 of the 2013 Act clarifies that material facts are those that may enable members to understand the meaning, scope and implication of the items of business and to take decision thereon.</p> <p>The 2013 Act provides that where as a result of the non-disclosure or insufficient disclosure in any Explanatory Statement, being made by a director, manager, or other key managerial personnel, if any, or their relatives, <i>any benefit accrues to</i> such director, manager, or other key managerial personnel, or their relatives, as the case may be, shall hold such benefit in trust for the company, and shall be liable to compensate the company to the extent of the benefit received by him.</p> <p>The 2013 Act provides that where any item of special business relates to or affects any other company, the extent of shareholding interest in that other company of every director, manager, if any, and of every other key managerial personnel of the first mentioned company shall be disclosed in the explanatory statement if the extent of such shareholding is 2% or more of the paid-up share capital of</p>

			that other company. <i>Earlier this limit was 20%.</i>
103	Quorum Meetings for	174	<p>Increase in quorum requirements for public companies having more than 1000 members;</p> <ul style="list-style-type: none"> (i) 5 members personally present for 1000 members, (ii) 15 members personally present for more than 1000 members but less than 5000 members and (iii) 30 members personally present for more than 5000 members. <p>Unlike the 1956 Act, the provisions as to what would happen if quorum not present within half-an-hour under the 2013 Act shall apply regardless of what articles of the company provide.</p> <p>It is further provided by the 2013 Act that in case of an adjourned meeting or of a change of day, time or place of adjourned meeting (due to lack of quorum), the company shall give not less than 3 days' notice to the members either individually or by press announcement. There was no such requirement in the 1956 Act.</p>
105	Proxies	176 and Schedule IX	<p>The 2013 Act provides that a person appointed as proxy shall act on behalf of such number of members not exceeding 50 and such number of shares as may be prescribed. There was no such restriction in the 1956 Act.</p> <p>The 2013 Act further provides that the Central Government may prescribe a class or classes of companies whose members shall not be entitled to appoint proxies. There was no such provision in the 1956 Act.</p> <p>However, both the above provisions of the 2013 Act along with sub-section 7 is not notified yet</p>
106	Restriction on voting rights	181, 182 and 183	The restriction of prohibition shall apply to both public and private companies.
111	Circulation of members' resolution	188	<p>The 2013 Act has effected changes in specified number of members entitled to give a requisition as under:</p> <ul style="list-style-type: none"> ➤ In case of company having a share capital, such number of members as hold 10% or more of the paid up share capital of the company having a right to vote as at the date of receipt of the requisition. ➤ In case of company not having share capital, such number of members as have 10% or more of the

			total voting power of all the members as at the date of receipt of the requisition.
114	Ordinary and Special Resolutions	189	Under the 2013 Act, ordinary resolutions and special resolutions may be passed by electronic voting. Votes cast electronically as well as votes cast by postal ballot will be counted for determining whether or not ordinary/special resolution has been passed. This was not the case under the 1956 Act.
161	Appointment of additional director, alternate director and nominee director	260, 262 and 313	<p>The 2013 Act requires that person appointed as alternate director should not be a person holding any alternate directorship for any other director in the company. There was no such requirement in the 1956 Act.</p> <p>The 2013 Act further provides that a person who is proposed to be appointed as an alternate director for an independent director should be qualified to be appointed as an independent director under the provisions of this Act. There was no such requirement in the 1956 Act.</p> <p>The 2013 Act provides that subject to the articles of the company, the Board may appoint any person as a director nominated by any institution in pursuance of the provisions of any law for the time being in force or of any agreement or by the Central Government or State Government by virtue of its shareholding in a Government company. There was no such provision in the 1956 Act.</p> <p>The 2013 Act provides that the board of directors shall not appoint a person who fails to get appointed as a director in a general meeting as an additional director. Such provision was not there in the 1956 Act.</p> <p>However, sub-section 2 is not notified yet.</p>
162	Appointment of directors to be voted individually	263	While the 1956 Act applied only to public companies, the 2013 Act applies to all companies whether public or private.
163	Option to adopt principle of proportional representation for appointment of directors	265	Unlike the 1956 Act, the 2013 Act applies to all companies whether public or private.
180	Restrictions on	293	Unlike the 1956 Act, the 2013 Act applies to all companies.

	powers of board		<p>Further, instead of ordinary resolution, the 2013 Act requires a special resolution to exercise those powers.</p> <p>Section 293 of the 1956 Act did not define the expressions “undertaking” and “substantially the whole of the undertaking” used in section 293 (1) (a) of the 1956 Act. However, section 180 of the 2013 Act defines these expressions using 20% criteria (20% of net worth/income/value of undertaking).</p>
181	Company to contribute to bonafide and charitable funds, etc.	293 (1) (e)	<p>Unlike the 1956 Act, the 2013 Act requires prior approval of the company in general meeting for contributing in excess of the specified limit.</p>
185	Loan to directors	295 and 296	<p>Unlike the 1956 Act, the 2013 Act applies to all the companies both public and private.</p> <p>In terms of the 1956 Act, loans made to or security provided or guarantee given in connection with loan taken by director of the lending company and certain specified parties required previous approval of the Central Government in that behalf. Under the 2013 Act, there is total prohibition on such transactions with-</p> <ul style="list-style-type: none"> ➤ Any director of the lending company or of a company which is its holding company or any partner or relative of any such director; ➤ Any firm in which any such director or relative is a partner; ➤ Any private company of which any such director is a director or member; ➤ Any body-corporate at a general meeting of which not less than 25% of the total voting power may be exercised or controlled by any such director, or by two or more such directors together; or ➤ Any body-corporate, the board of directors, managing director, or manager whereof is accustomed to act in accordance with the directions or institutions of the board, or of any director or directors, of the lending company <p>However, the aforesaid prohibition shall not apply to the giving of any loan to a managing or whole-time director (i) as a part of the conditions of service extended by the</p>

			company to all its employees; or (ii) pursuant to any scheme approved by the members by a special resolution
192	Restriction on non-cash transactions involving directors	NA	<p><i>New Provisions</i></p> <p>It regulates arrangements in respect of acquisition of assets for consideration other than cash between a company and a director of the company or its holding company or its subsidiary or its associate or person connected with such director. This section provides that such arrangements shall require prior approval by a resolution in general meeting. If the director or connected person is a director of its holding company, approval is also required to be obtained by passing a resolution in general meeting of the holding company. An arrangement entered into by a company or its holding company in contravention of the provisions is voidable at the instance of the company.</p>
194	Prohibition on forward dealings in securities of company by director or KMP	NA	<p><i>New Provisions</i></p> <p>This new section prohibits whole-time director or any key managerial personnel from buying certain kinds of future contracts in securities of the company, its holding, subsidiary or associate company.</p>