

M.PHIL. IN COMMERCE

Paper – COM 123: Corporate Financial Reporting

COM 123.1: Change in Corporate Accounting Practices

Difference between Companies Act 2013 and Companies Act 1956

Companies Act 2013 vs Companies Act 1956			
Sl No.	Point of difference	Companies Act 2013	Companies Act 1956
1.	Financial Year	Companies must have their financial year ending on 31 Mar every year	Companies were permitted to have financial year ending on a date decided by Company
2.	Formats of Financial Statement	Schedule III	Schedule VI
3.	Maximum No of Partners	As per rules, subject to Max 100. Currently is 50.	10 in banking business and 20 in any other business
4.	Max Shareholders in Pvt Ltd Company	200 excluding past and present employees	50 excluding past and present employees
5.	One Person Company (OPC)	Company which has only one person (natural person) as its member	Did not exist
6.	Issue of Share at discount	Section 53 prohibits issue of shares at a discount. However, Section 54 permits issue of ESOP (employee stock ownership plan) to its employees at a discount.	Section 79 permitted issue of shares at a discount.
7.	Security Premium Reserve	Utilization of Securities Premium Reserve is provided in Section 52(2)	Utilization of Securities Premium Reserve was provided in Sec 77A and 78
8.	Article of Association	Table F applies where Companies Limited by shares does not adopt their own Articles of Association.	Table A applied where Companies did not adopt their own Articles of Association.
9.	Interest in Calls in Arrears	In the absence of a clause in the Articles of Association, the maximum interest chargeable on Calls-in-arrears is 10% p.a.	In the absence of a clause in the Articles of Association, maximum interest chargeable on Calls-in-arrears was 5% p.a.
10.	Interest in Calls in Advance	In the absence of a clause in the Articles of Association, the maximum interest payable on Calls-in-advance is 12% p.a.	In the absence of a clause in the Articles of Association, the maximum interest payable on Calls-in-advance was 6% p.a.

11.	Minimum Subscription	Sec39 a company shall not allot Securities unless the amount stated in the prospectus as minimum subscription has been subscribed & the sum paid	Sec 69 the requirement of minimum subscription was with respect to Shares only
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Board of Directors

Board of Directors — (1) Every company shall have a Board of Directors consisting of individuals as directors and shall have—

(a) a minimum number of three directors in the case of a public company, two directors in the case of a private company, and one director in the case of a One Person Company; and

(b) a maximum of fifteen directors.

Provided that, a company may appoint more than fifteen directors, after passing a special resolution. Provided further that, such class or classes of companies as may be prescribed shall have at least one woman director.

(2) Every company shall have at least one director who has stayed in India for a total period of not less than one hundred and eighty-two days in the previous calendar year.

(3) Every listed public company shall have at least one-third of the total number of directors as independent directors.

(4) An independent director in relation to a company, means a director other than a managing director or a whole-time director or a nominee director,—

(a) who, in the opinion of the Board, is a person of integrity and possesses relevant expertise and experience;

(b) (i) who is or was not a promoter of the company or its holding, subsidiary or associate company;

(ii) who is not related to promoters or directors in the company, its holding, subsidiary or associate company;

(c) who has or had no monetary relationship with the company, its holding, subsidiary or associate company, or their promoters, or directors, during the two immediately preceding financial years or during the current financial year;

(d) none of whose relatives has or had monetary relationship or transaction with the company, its holding, subsidiary or associate company, or their promoters, or directors, amounting to two percent or more of its gross turnover or total income or fifty lakh rupees or such higher amount as may be prescribed, whichever is lower, during the two immediately preceding financial years or during the current financial year;

(e) who, neither himself nor any of his relatives—

(i) holds or has held the position of a key managerial personnel or is or has been employee of the company or its holding, subsidiary or associate company in any of the three financial years immediately preceding the financial year in which he is proposed to be appointed;

(ii) is or has been an employee or proprietor or a partner, in any of the three financial years immediately preceding the financial year in which he is proposed to be appointed, of—

(A) a firm of auditors or company secretaries in practice or cost auditors of the company or its holding, subsidiary or associate company; or

(B) any legal or a consulting firm that has or had any transaction with the company, its holding, subsidiary or associate company amounting to ten per cent. or more of the gross turnover of such firm;

(iii) holds together with his relatives two percent or more of the total voting power of the company; or

(iv) is a Chief Executive or director, by whatever name called, of any nonprofit organisation that receives twenty-five per cent. or more of its receipts from the company, any of its promoters, directors or its holding, subsidiary or associate company or that holds two per cent. or more of the total voting power of the company; or

(f) who possesses such other qualifications as may be prescribed.

(5) Every independent director shall at the first meeting of the Board in which he participates as a director and thereafter at the first meeting of the Board in every financial year should give a declaration that he meets the criteria of independent director.

(6) An independent director shall not be entitled to any stock option and may receive remuneration by way of fee provided under sub-section (5) of section 197, reimbursement of expenses for participation in the Board and other meetings and profit related commission as may be approved by the members.

(7) an independent director shall hold office for a term up to five consecutive years on the Board of a company, but shall be eligible for reappointment on passing of a special resolution by the company.

Number of directorships — (1) No person, after the commencement of this Act, shall hold office as a director, including any alternate directorship, in more than twenty companies at the same time:

Provided that the maximum number of public companies in which a person can be appointed as a director shall not exceed ten.

Write a brief note on ‘One Man Company’.

One Person Company means a private company which has only one person as a member. In case of one person company the words “One Person Company” shall be mentioned in brackets below the name of such company, wherever its name is printed, affixed or engraved.

A minimum number of one director is to be appointed by the member in the case of a One Person Company. An individual being member shall be deemed to be its first director until the director or directors are duly appointed by the member in accordance with the provisions of the Act.

A One Person Company is required to conduct at least one meeting of the Board of Directors in each half of a calendar year and the gap between the two meetings is not less than ninety days. For one person company conduct of annual general meeting is not required.

In case of a One Person Company, on the death of the sole member the person nominated by such member shall have all the shares of the deceased member. Such nominee shall be entitled to the same dividends and other rights and liabilities to which such sole member of the company was entitled or liable.

The financial statement, with respect to One Person Company may not include the cash flow statement.

For One Person Company, the annual return shall be signed by the company secretary, or where there is no company secretary, by the director of the company.

What is Audit Committee? What are its powers and functions?

Audit Committee:—(1) The Board of Directors of every listed company and such other class or classes of companies, as may be prescribed, shall constitute an Audit Committee.

(2) The Audit Committee shall consist of a minimum of three directors with independent directors forming a majority:

Provided that majority of members of Audit Committee including its Chairperson shall be persons with ability to read and understand, the financial statement.

(4) Every Audit Committee shall act in accordance with the terms of reference specified in writing by the Board which shall, inter alia, include,—

(i) the recommendation for appointment, remuneration and terms of appointment of auditors of the company;

(ii) review and monitor the auditor's independence and performance, and effectiveness of audit process;

(iii) examination of the financial statement and the auditors' report thereon;

(iv) approval or any subsequent modification of transactions of the company with related parties:

Provided that the Audit Committee may scrutinized the approval for related party transactions proposed to be entered into by the company.

(v) scrutiny of inter-corporate loans and investments;

(vi) valuation of undertakings or assets of the company, wherever it is necessary;

(vii) evaluation of internal financial controls and risk management systems;

(viii) monitoring the end use of funds raised through public offers and related matters.

(5) The Audit Committee may call for the comments of the auditors about internal control systems, the scope of audit, including the observations of the auditors and review of financial statement before their submission to the Board.

SHARE CAPITAL

Kinds of share capital.—The share capital of a company limited by shares shall be of two kinds, namely:—

(a) Equity share capital

(b) Preference share capital

Numbering of share- Every share in a company having a share capital shall be distinguished by its distinctive number.

Issue of shares at a premium: Where a company issues shares at a premium, whether for cash or otherwise, a sum equal to the aggregate amount of the premium received on those shares shall be transferred to a ‘securities premium account’.

The securities premium account may be applied by the company—

(a) towards the issue of fully paid bonus shares;

(b) in writing off the preliminary expenses of the company;

- (c) in writing off the expenses of, or the commission paid or discount allowed on, any issue of shares or debentures of the company;
- (d) in providing for the premium payable on the redemption of any redeemable preference shares or of any debentures of the company; or
- (e) for the purchase of its own shares

Prohibition on issue of shares at discount.—(1) Except as provided in section 54 (sweat equity), a company shall not issue shares at a discount.

(2) Any share issued by a company at a discounted price shall be void.

(3) Where a company contravenes the provisions of this section, the company shall be punishable with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees and every officer who is in default shall be punishable with imprisonment for a term which may extend to six months or with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees, or with both.

Issue of sweat equity shares - A company may issue sweat equity shares of a class of shares already issued, if the following conditions are fulfilled, namely:—

- (a) the issue is authorized by a special resolution passed by the company;
- (b) the resolution specifies the number of shares, the current market price, consideration, if any, and the class or classes of directors or employees to whom such equity shares are to be issued;
- (c) not less than one year has, at the date of such issue, elapsed since the date on which the company had commenced business; and
- (d) where the equity shares of the company are listed on a recognized stock exchange, the sweat equity shares are issued in accordance with the regulations made by the Securities and Exchange Board in this behalf and if they are not so listed, the sweat equity shares are issued in accordance with such rules as may be prescribed.

(2) The rights, limitations, restrictions and provisions as are applicable to equity shares shall be applicable to the sweat equity shares issued under this section and the holders of such shares shall rank at par with other equity shareholders.

Power of company to purchase its own securities (Buy-back of Shares)— (1) A company may purchase its own shares or other specified securities (hereinafter referred to as buy-back) out of—

- (a) its free reserves;
- (b) the securities premium account; or
- (c) the proceeds of the issue of any shares

Provided that no buy-back of any kind of shares or other specified securities shall be made out of the proceeds of an earlier issue of the same kind of shares.

(2) No company shall purchase its own shares under sub-section (1), unless—

- (a) the buy-back is authorized by its articles;
- (b) a special resolution has been passed at a general meeting of the company authorizing the buy-back:

Provided that nothing contained in this clause shall apply to a case where—

- (i) the buy-back is, ten per cent. or less of the total paid-up equity capital and free reserves of the company; and
- (ii) such buy-back has been authorized by the Board by means of a resolution passed at its meeting;
- (c) the buy-back is twenty-five per cent or less of the aggregate of paid-up capital and free reserves of the company;
- (d) the ratio of the aggregate of secured and unsecured debts owed by the company after buy-back is not more than twice the paid-up capital and its free reserves;
- (e) all the shares for buy-back are fully paid-up;
- (f) the buy-back of the shares listed on any recognized stock exchange is in accordance with the regulations made by the Securities and Exchange Board in this behalf; and

Provided that no offer of buy-back under this sub-section shall be made within a period of one year reckoned from the date of the closure of the preceding offer of buy-back, if any.

(3) The notice of the meeting at which the special resolution is proposed to be passed under clause (b) of sub-section (2) shall be accompanied by an explanatory statement stating—

- (a) a full and complete disclosure of all material facts;
- (b) the necessity for the buy-back;
- (c) the class of shares or securities intended to be purchased under the buy-back;

- (d) the amount to be invested under the buy-back; and
- (e) the time-limit for completion of buy-back.
- (4) Every buy-back shall be completed within a period of one year from the date of passing of the special resolution,
- (5) The buy-back under sub-section (1) may be—
- (a) from the existing shareholders or security holders on a proportionate basis;
- (b) from the open market;
- (c) by purchasing the securities issued to employees of the company pursuant to a scheme of stock option or sweat equity.
- (6) Where a company completes a buy-back of its shares under this section, it shall not make a further issue of the same kind of shares within a period of six months except by way of a bonus issue or stock option schemes, sweat equity or conversion of preference shares or debentures into equity shares.
- (7) A listed company shall, after the completion of the buy-back under this section, file with the Registrar and the Securities and Exchange Board a return containing such particulars relating to the buy-back within thirty days of such completion, as may be prescribed:

1. What is security premium account? For which purpose can it be utilized? (1+4)
2. Can a company issue shares at a discount? Write down the consequence where a company issue shares at a discount. (1+4)
3. What is sweat equity? Write down the provisions for issuing sweat equity shares. (1+4)
4. What is buy-back of shares? Write down the important provisions of companies act regarding buy back of own shares. (1+9)
5. Short notes on- a) One Person Company b) Audit Committee (5+5)

DECLARATION AND PAYMENT OF DIVIDEND
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Declaration of dividend.—(1) No dividend shall be declared or paid by a company for any financial year except—

(a) out of the profits of the company for that year arrived at after providing for depreciation in accordance with the provisions of sub-section (2), or out of the profits of the company for any previous financial year or years arrived at after providing for depreciation in accordance with the provisions of that sub-section and remaining undistributed, or out of both; or

(b) out of money provided by the Central Government or a State Government for the payment of dividend by the company in pursuance of a guarantee given by that Government:

Provided that a company may, before the declaration of any dividend in any financial year, transfer such percentage of its profits for that financial year as it may consider appropriate to the reserves of the company:

Provided further that where, owing to inadequacy or absence of profits in any financial year, any company proposes to declare dividend out of the accumulated profits earned by it in previous years and transferred by the company to the reserves, such declaration of dividend shall not be made except in accordance with such rules as may be prescribed in this behalf:

Provided also that no dividend shall be declared or paid by a company from its reserves other than free reserves:

(2) The Board of Directors of a company may declare interim dividend during any financial year out of the surplus in the profit and loss account and out of profits of the financial year in which such interim dividend is sought to be declared:

(3) The amount of the dividend, including interim dividend, shall be deposited in a scheduled bank in a separate account within five days from the date of declaration of such dividend.

(4) No dividend shall be paid by a company in respect of any share therein except to the registered shareholder of such share or to his order or to his banker and shall not be payable except in cash:

Provided that nothing in this sub-section shall be deemed to prohibit the capitalization of profits or reserves of a company for the purpose of issuing fully paid-up bonus shares or paying up any amount for the time being unpaid on any shares held by the members of the company:

Provided further that any dividend payable in cash may be paid by cheque or warrant or in any electronic mode to the shareholder entitled to the payment of the dividend.

Unpaid Dividend Account.— (1) Where a dividend has been declared by a company but has not been paid or claimed within thirty days from the date of the declaration to any shareholder

entitled to the payment of the dividend, the company shall, within seven days from the date of expiry of the said period of thirty days, transfer the total amount of dividend which remains unpaid or unclaimed to a special account to be opened by the company in that behalf in any scheduled bank to be called the Unpaid Dividend Account.

(2) The company shall, within a period of ninety days of making any transfer of an amount under sub-section (1) to the Unpaid Dividend Account, prepare a statement containing the names, their last known addresses and the unpaid dividend to be paid to each person and place it on the website of the company, if any, and also on any other website approved by the Central Government for this purpose, in such form, manner and other particulars as may be prescribed.

(3) If any default is made in transferring the total amount referred to in sub-section (1) or any part thereof to the Unpaid Dividend Account of the company, it shall pay, from the date of such default, interest on so much of the amount as has not been transferred to the said account, at the rate of twelve per cent. per annum and the interest accruing on such amount shall ensure to the benefit of the members of the company in proportion to the amount remaining unpaid to them.

(4) Any person claiming to be entitled to any money transferred under sub-section (1) to the Unpaid Dividend Account of the company may apply to the company for payment of the money claimed.

(5) All shares in respect of which dividend has not been paid or claimed for seven consecutive years or more shall be] transferred by the company in the name of Investor Education and Protection Fund along with a statement containing such details as may be prescribed:

(6) If a company fails to comply with any of the requirements of this section, the company shall be punishable with fine which shall not be less than five lakh rupees but which may extend to twenty-five lakh rupees and every officer of the company who is in default shall be punishable with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees.