

# Asian Resonance

## Changes in Companies Act in relation to Directors

### Abstract

Companies Act 1956 was in existence for about 45 years, had undergone 25 amendments and seemed quite ineffective in controlling today's challenges and corporate scandals therefore a need was felt for a new legislation, hence Companies Bill 2009 was passed in the Parliament. The said bill has undergone several suggestions & amendments and finally Companies Bill 2012 was introduced which got assent by hon. President of India on Aug.30,2013 as Companies Act,2013. The purpose of this paper is to study the difference between CA 1956 & CAS 2013. CA 2013 is a welcome step in strengthening CG with introduction of provisions regarding duties & liabilities of directors/ID.

**Keywords:** Companies Act 1956 & 2013

### Introduction

Certain reasons for enactment of CA 2013 are as follows:----

- 1) CA 1956 is half a century old law.
- 2) Changes in national & international economic environment.
- 3) Drastic changes in our economic growth & expansion.
- 4) Concept of corporate governance has been shattered due to recent corporate scandals so to enhance corporate democracy.
- 5) Bring better transparency and strict regulations.

CA 2013 shows a titanic shift from "government control" to "self control". With the changes in CA 2013 it is expected to believe that the quality of functioning of BOD will increase, responsibility level of top management will enhance, deep understanding of concept of corporate governance and increase in trust of investors & stakeholders will be seen.

### Comparison Between CA 1956 & CA 2013---

s.no.	Particulars	CA 1956	CA 2013
1.	Max.no.of directors	12	15
2.	Min.no.of directors	2(Pvt.),3(Pub.)	2(Pvt.),3(Pub.),1(OPC)
3.	Appointment of woman director	No such provision	S.149(1)
4.	No. of directorship	15	20
5.	s.149(3)	No provision	Atleast 1 director stay in india for 182 days.
6.	Code for ID	No provision	Schedule IV Of Act.
7.	Liability of ID	No provision	Sec. 149(12) of Act
8.	Role & duties of ID	Role & duties not described	Sec.149(6)of Act

### Key Highlights of CA 2013 regarding directors-----

1. One person company
2. S. 149(3)---Compulsory appointment of one resident director
3. S. 149(4)--Independent directors
4. S. 150---Manner of selection of ID
5. S. 151--Appointment of director elected by small shareholder
6. S. 152---Appointment of directors
7. S. 153---Application for allotment of DIN
8. S.154---Allotment of DIN
9. S. 155---Prohibition to obtain more than one DIN
10. S. 156---Director to intimate DIN
11. S. 157---Company to inform DIN no. to registrar.

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12. S. 155---Prohibition to obtain more than one DIN
13. S. 156---Director to intimate DIN
14. S. 157---Company to inform DIN no. to registrar.
15. S. 164--Disqualification for appointment of directors
16. S.166--- Duties of directors
17. S. 167--- Vacation of office of director
18. S. 168--- Resignation of director
19. S. 169--- Removal of director

## a) One person company-----

2013 Act provides that a company is formed with one director & one shareholder while CA 1956 provides that a company is formed with two shareholders & two directors

## b) Restriction on composition-----

S. 149 provides that there shall be one director who has stayed in India for atleast 182 days in the previous calendar year.

## c) Duties of director-----

Under CA 1956 only fiduciary duties has been described but under CA 2013 duties of director and independent director has been prescribed clearly.

## d) Independent director-----

Under CA 1956 no provision for independent director has been made but under CA 2013 all listed companies should have atleast 1/3 of the board as independent director.

## e) Liability on director---

**CA 2013 does not restrict an** Indian company from indemnifying its director & officer as was under CA 1956.

## f) Unity in diversity in boardroom-----

s. 149 provides that every company shall have atleast one women director.

## Advantages of CA 2013-----

- 1) Diversified background in boardroom---- introduction of appointment of women director is a welcome step for women as it helps in enhancing women empowerment.
- 2) Act provides that the board consist of one-third of independent directors which will help in curbing nepotism to a large extent.
- 3) With this Act, benefits to small companies now be remarkably enhanced.

## Disadvantages Of CA 2013-----

- 1) In India IDs are appointed by promoters which is a great hinderance in their independence as ID are under their obligation because they are being employed by promoters.
- 2) Id give full support to promoters & can't speak against them as they are being paid by the promoters.
- 3) There is no qualification mentioned in the Act to become an ID due to which anybody can enroll himself for the said post.

## Case Laws -----

### 1. Minimum Number. of Directors-----

The provision as to the minimum number of director are mandatory & consequently any business transacted after the number fell below the minimum was held to be invalid.**Sly,Spink & Co.,Re(1911)2 Ch 430**

## 2) Filling Of Casual Vacancies Among Directors---

A casual vacancy means any vacancy occurring by death, resignation or insolvency & not by efflux of time or retirement by rotation. **Srinivasavn (M.K.) V W.S. Subramanya Ayyar (1932)2 Com Cases 147**

## 3) Restriction On Number Of Directorship----

A director can also be precluded by contract & is already bound by a fiduciary duty not to pass on confidential information from one company to another. **The Street Pty. Ltd. V Cott (1990)3 ACSR 54 (Aust.)**

## 4) Only Individuals Additional Directors-----

Without a power given by the articles, the board cannot appoint additional directors. The section applies to all companies, public & private.**Needle Industries (Indian ltd.) v Needles Industries Wewey (India) holdings ltd.AIR 1981 SC 1298**

## Conclusion & Suggestion

Though with the introduction of CA 2013, the liability & responsibility on directors/ ID has increased but it's a reforming change & is expected to improve corporate governance norms , transparency, accountability & protection of interest of investors. It is supposed to bring friendly environment within the corporate world which will help in economic growth and development of corporate sector in India.

## Suggestions ----

- 1) Nomination committee should consist of only IDs for the appointment of ID.
- 2) Strict implementation of rules & laws are required.
- 3) There shall be prescribed qualification for the common man to become an ID.
- 4) Directors should made corporate disclosures to the public.
- 5) It is unreasonable to think that for better CG, ID is required instead such regulation is needed which is free from loopholes & is clear & non-ambiguous.

## References

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## Glossary

CA- Companies Act  
CG-corporate governance  
Co.-company  
Min.-minimum  
Max.-maximum  
No.-number  
ID-independent director