

MISCELLANEOUS SIGNIFICANT BUT RELATIVELY UNKNOWN

PROVISIONS OF THE COMPANIES ACT, 1956

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The Companies Act, 1956 is indeed one of the most voluminous statutes of India. It contains provisions ranging from '*birth to death*' of a company. Even after numerous amendments in the name of liberalizing the Act, the Central Government still retain controls over various matters related to governance of the companies - the most important being the appointment and payment of remuneration of the Managing Directors, Whole-time Directors and Managers provided the payment of remuneration exceeds the limits prescribed in the Act. The Central Government continues to cast a doubt on the wisdom of the shareholders. The main reason could be the control which is still retained by the promoters in most of the companies and the shareholders who are spread far and wide have practically no say in the decisions affecting the companies.

To safeguard the interest of the shareholders or members of the companies, the professionals, particularly the Chartered Accountants, play a significant role be it as auditors, consultants, advisors etc. A Chartered Accountant is expected to be an authority in various fields such as audit, taxation and corporate laws. The knowledge of corporate laws is vital not only for audit function but also for rendering corporate advisory services. The stakeholders in a company namely, the Government, Regulatory Bodies, Shareholders, Investors, General Public etc. rely upon the information available through published accounts of a company and the factor that greatly contributes to such reliance is the confidence on the Chartered Accountancy profession. A Chartered Accountant, thus, shoulders a greater responsibility for which technical knowledge of corporate laws is essential.

The major provisions of the Companies Act, 1956 (hereinafter referred to as 'the Act') are well known and the professionals are also familiar with them to a certain extent. It is, however, impossible to keep track of all the provisions of such a voluminous Act. The attempt in this paper is to highlight those provisions of the Act which are relatively unknown but significant in practice and implementation. The inadvertent non-compliance of such provisions can result in prosecution. Even though the non-compliance of such provisions of the Act may not result in penalties, yet they may play a significant role in rendering professional advise to the company. Such advice, more often than not, plays a crucial role in governance of the company besides streamlining the procedures to be followed.

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The significant but relatively unknown provisions of the Act have been enumerated as under in the form of '**Do you know**' questions: -

1. **Do you know** that a person who is not on the Board of Directors of a company can enjoy substantial powers of the management of the affairs of the company?

Yes, a company can have such a person. He can be designated as 'Manager' who can enjoy powers equivalent to a Managing or Whole-time Director in a company. A manager need not be on the Board of Directors of the company though he works subject to the superintendence, control and direction of the Board of Directors of the company.

2. **Do you know** that General Meeting of a company can be held on a public holiday provided the notice calling the General Meeting was issued prior to declaration of such a day as public holiday?

If the notice of a meeting has been issued prior to the notification issued by the Government declaring that day it to be a public holiday, then the meeting can be held on that day without attracting any penal consequences. Such a meeting will not be invalidated for reasons of being held on a public holiday.

3. **Do you know** that in the definition of 'relative', daughter's daughter's husband of a director is also included though Brother's son (Nephew) is excluded unless he is a member of same HUF?

We have strange definition of the term 'relative' in the Companies Act, 1956. It includes members of HUF, husband and wife and also includes distant relative such as daughter's daughter, daughter's son's wife, daughter's daughter's husband but does not include the nephews & nieces unless they are the member of same HUF.

4. **Do you know** that equity shares can now be issued with differential rights as to dividend, voting or otherwise?

After the amendment of the Act in 2000, a company can issue equity shares with differential rights as to dividend, voting or otherwise in accordance with Companies (Issue of Share Capital with Differential Voting Rights) Rules, 2001.

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5. **Do you know** that in case of default of the provisions of the Act, the person who are liable for punishment or penalty are “Officers in default” and this includes any person charged by the Board with the responsibility of compliance with that provision?

Under the Act, “Officer who is in default” mean the following officers of the company namely: -

- a. the managing director or managing directors;
 - b. the whole-time director or whole-time directors;
 - c. the manager;
 - d. the secretary;
 - e. any person in accordance with whose directions or instructions the Board of directors of the company is accustomed to act;
 - f. any person charged by the Board with the responsibility of complying with that provision, provided that the person so charged has given his consent in this behalf to the Board;
 - g. where any company does not have any of the officers specified in clauses (a) to (c), any director or directors who may be specified by the Board in this behalf or where no director is so specified, all the directors:
6. **Do you know** that if the name of a company is identical with or too nearly resembles with a registered trade mark, then the owner of such a trade mark can make an application to the Central Government to get that company’s name changed within a period of 5 years of coming to his notice of registration of the company?

After the amendment brought in by the Trade Marks Act, 1999, a registered proprietor of trade mark can make an application to the Central Government for a direction for change of name of a company which is identical with or too nearly resembles the registered trade mark within a period of 5 years of coming to his notice of registration of the company. In other cases, the power of the Central Government is restricted and the directions can be issued by the Central Government only within 12 months of the company’s first registration or its registration by new name as the case may be.

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7. **Do you know** that a firm can also become a member of an association or company licenced under section 25 of the Act?

A firm can become a member of a company holding a licence under section 25 of the Act in its own name and the restriction that no firm can hold shares in a company does not apply to section 25 companies.

8. **Do you know** that a declaration in Form No. 1 relating to registration of the company can not be filed by an Advocate who is not entitled to appear before the Supreme Court or in any High Court?

A declaration in Form No. 1 which is required to be filed at the time of registration of the company can only be filed by an Advocate of the Supreme Court or of a High Court, an attorney or pleader entitled to appear before High Court or a Secretary or a Chartered Accountant in whole time practice in India.

9. **Do you know** that a copy of Memorandum of Association, Articles of Association and all agreements and resolutions required to be registered under section 192 are to be supplied to a member within 7 days of the requirement on payment of a fee of Re. 1/- only?

If a member of a company demands a copy of Memorandum of Association, Articles of Association and all agreements and resolutions required to be registered under section 192, the same has to be supplied by the company within 7 days of such demand and on payment of a fee of Re. 1/- for each document. This provision is, therefore, extremely shareholder friendly.

10. **Do you know** that it is not necessary to file Form No. 2 for shares to be issued to the subscribers of the Memorandum?

There is no need to file Form No. 2 for shares subscribed by the subscribers of the Memorandum. The logic behind this is that since such subscription does not involve allotment of shares, the return of allotment in Form No. 2 is not required to be filed. However, if a specific resolution regarding allotment of shares to the subscribers is passed in any Board Meeting, then filing of Form No. 2 would become mandatory.

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11. **Do you know** that a subsidiary company cannot be allotted shares in its holding company after it becomes its subsidiary?

A subsidiary company cannot acquire shares in its holding company by way of allotment or transfer of shares after it becomes its subsidiary. Any such allotment or transfer of shares in a holding company to its subsidiary is void. However, the subsidiary company will continue to be a member of the holding company if it was a member prior to becoming a subsidiary of the holding company but such subsidiary shall have no right to vote at meetings of the holding company or of any class of members thereof.

12. **Do you know** that a member can request a company to send all documents including notices by registered post with or without acknowledgement due?

The normal course of serving the documents by a company on its members is to send it by ordinary post. However, a member can request the company to send all the documents including notices by registered post with or without acknowledgement due provided he has deposited a sum sufficient to defray the expenses of doing so.

13. **Do you know** that it is mandatory to paint or affix the name of the company and the address of registered office outside every office of the company?

Under the provisions of the Companies Act it is mandatory for each company to keep the name and address of registered office painted outside every office or place in which the business of the companies carried on. Similarly the name and address of the registered office is required to be mentioned in all business letters, bills, notices and official publications. Non-compliance of this requirement entails fine to the tune of Rs. 5,000/-.

14. **Do you know** that the annual return of a company not having a share capital is not made in the form prescribed in Schedule V to the Act?

A company not having a share capital is required to submit its annual return in Form No. 21-A of General Rules and Forms and not in the format of annual return prescribed in Schedule V of the Act.

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15. **Do you know** that every member who is entitled to vote at the meeting of the company can inspect the proxies lodged with the company?

Every member who is entitled to vote at a meeting of the company is entitled to inspect the proxies lodged during the period beginning 24 hours before the time fixed for the commencement of the meeting & ending with the conclusion of the meeting provided not less than 3 days' notice in writing is given to the company.

16. **Do you know** that a poll demanded on any question other than the question of adjournment in a General Meeting can be taken within 48 hours from the time when the demand was made?

It is not necessary to take poll immediately on its demand unless it is on a question of adjournment or a question related to election of a Chairman. Such a poll can be taken within 48 hours from the time when the demand was made at the discretion of the Chairman of the meeting.

17. **Do you know** that there is a prohibition of simultaneous appointment of different categories of general meetings?

No company can appoint a Managing Director and / or Whole Time Director alongwith a Manager. The Act prohibits simultaneous appointment of Managing Director and / or Whole Time Director along with a Manager.

18. **Do you know** that a company can obtain exemption from complying with the provisions of Schedule VI to the Act?

A company can make an application to the Central Government for exemption from compliance of the requirements as to the matter to be stated in the company's balance sheet and profit & loss account.

19. **Do you know** that appointment of directors is to be voted on individually at a General Meeting of a public company or a private company which is a subsidiary of a public company?

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In terms of the provisions of the Act, appointment of two or more persons as directors of the company cannot be made by a single resolution in case of a public company or a private company which is a subsidiary of a public company. Any resolution passed in contravention shall be void.

20. **Do you know** that the Board, if so permitted by the articles can appoint a Managing Director in a company, and the approval of the members can be obtained in the ensuing Annual General Meeting?

Under the Act prior approval of the shareholders is not required for appointment of a Managing Director in a public company or a private company which is a subsidiary of a public company. It can be obtained in the ensuing Annual General Meeting.

21. **Do you know** that notice of every board meeting has to be given in writing?

The notice of every board meeting has to be given in writing to every director for the time being in India and at his usual address in India to every other director. The Act, however, does not prescribe the length of notice of board meeting.

22. **Do you know** that the provisions of section 285 are not contravened if a meeting of the board, which has been called but could not be held for want of quorum?

Under section 285 of the Act every company is required to hold a board meeting at least once in every three calendar months. However, if a meeting of the board, though called, is not held for want of quorum, the provisions of section 285 shall not be deemed to have been contravened.

23. **Do you know** that prior approval of the Central Government is required for making any loan to any director or any partner or relative of any such director?

For making any loan to or giving any guarantee or providing any security in connection with the loan made by any person to, or to any other person by, a director of the company or any

partner or relative of any such director, previous approval of the Central Government is required.

24. **Do you know** that the company is prohibited to pay tax-free remuneration to any of its officer or employee?

Under the Act no company can pay its officer or employee remuneration free of taxes in terms of section 200 of the Act.

25. **Do you know** that the previous approval of the Central Government is not required for a contract for sale, purchase or supply of any goods, material or services between a director or director interested party and the company if the contract is entered at the time when the paid-up capital of the company is less than Rs. one crore?

In case a company has a paid-up share capital of less than Rs. one crore, for a contract to be entered between the company and a director of the company or his relative, a firm in which such a director or relative is a partner, any other partner in such a firm, or a private company of which the director is a member or director, no approval of the Central Government is required for the tenure of the contract.