

© CHETAN GANDHI'S

Systematic Approach
To Company Law
And Corporate
Governance

For Law Students



SYSTEMATIC APPROACH TO COMPANY LAW AND CORPORATE GOVERNANCE

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About the Author



CS Dr. Chetan Gandhi is a Fellow Member of ICSI and has also studied Master of Arts in Leadership Science, Master of Laws, Diploma in Information Technology Act and Post Graduate Diploma in Comparative Mythology. Apart from being a Certified Practitioner in Neuro Linguistic Programming, he is having an experience of around 30 years in International and Indian Market in Legal, Secretarial, Compliance, Arbitration, Training and Personnel functions in diverse industry segments including Financial, Manufacturing and Trading.

He has been a member of Board of Studies at University of Mumbai. He is also a member of Indian Society for Training & Development and Institute of Directors.

He has received few Awards like, 'Kalp-Excellence in Teaching Award' for outstanding contribution in the field of Teaching & Law by Department of Biotechnology and Microbiology, Kalp Laboratories (KLCBAS) & The Bouquet Society at National Conference on Multidisciplinary Research & Innovation (2022), 'Best Oral Presentation of Research Paper' at National Conference on Multidisciplinary 'Research & Innovation (2022), 'Best Research Paper Award' at National Conference, Prof. Bal Apte Centre for Studies in Students and Youth Movements, University of Mumbai (2022), 'Certificate for Commendable Research' at Strategic Management Forum Annual Conference 2021, Indian Institute of Management Nagpur (2021), and 'Best Research Paper Award' at International Management Conference, Alkesh Dinesh Mody Institute for Financial & Management Studies (2021).

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He has been Judge for various competitions of ICSI like All India Elocution Competition and All India Essay writing competition and has also been a Quiz Master of National Company Law Quiz Competition.

He is an expert lecturer for Company Law, Securities Laws & Capital Market and Economic & Commercial Laws with a blend of vast industrial experience. He has also published books titled Easy Notes of Company Law, Systematic Approach to Company Law & FEMA and Company Law made easy.

Presently he is providing consultancy in the field of Secretarial, Legal, Compliance, Leadership & Training under the name ‘Chetan Gandhi & Associates’.

Dedicated to

Shri Shri Radha
Krishna

Jai Shri Vallabh

PREFACE

It's been more than three decades since I have been reading Company Law and have always enjoyed learning it. Companies Act, 2013 recently celebrated its 10th birthday in August, 2023. This Act is one of the lengthiest laws to be studied by students pursuing law. It was an honour for me to be a member of the Syllabus Revision Committee, Board of Studies at University of Member, which gave me an opportunity to design the Company Law syllabus considering the current trends in law, specially in corporate sector. Accordingly concepts of Insider trading, ESG and Corporate Governance have been introduced for the first time in the syllabus for students in Law.

Further I have observed that students have been finding it very difficult to understand and remember the provisions of the Companies Act, 2013 along with the rules, and so considering this as a challenge I had decided to simplify this subject for future professionals who will be studying Companies Act, 2013. My previous books 'Company Law Made Easy', 'Systematic Approach to Company Law & FEMA', 'Company Law Notes' and others have received overwhelming acceptance by students and professionals and to continue serving all I have come up with the third edition of "Systematic Approach to Company Law & Corporate Governance" incorporating the revised syllabus .

This book contains all important concepts of Companies Act, 2013 duly updated till, October 2013. It has been designed to make it easy and act as a quick reference, by referring to the Index of Sections provided along with the gist of the provisions, compilation of all forms, diagrams, tables and acronyms. This will help to create interest in the subject amongst students and aim to be an expert in Company Law.

Wishing all the best to all readers of this book who would enjoy reading and remembering sections and provisions of Company Law.

14th December, 2023

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INCORPORATION OF COMPANY AND MATTERS INCIDENTAL THERETO

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- 3A **Members severally liable in certain cases** – members reduced < 7 / 2 + carries business > 6 months
4. **Memorandum** – R 3, 8, 9 – name (ltd/Pvt ltd), rgd off, Objects, liability. Name applic – Form INC 1, Table A to E – Sch I
5. **Articles** – R 10, 11 – regulations for mgt, Table F to J – Sch I
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7. **Incorporation of company** – MAA, declaration, affidavit (INC9), add, subscriber, directors, DIR 12, COI
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9. **Effect of registration** – exercise all functions → acquire, hold and dispose of property, contract, sue and be sued
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- 10A **Commencement of Business, etc** – file declaration w/n 180 days of incorporation → subscriber has paid for shares
11. **Commencement of business, etc.** – declaration (INC21), office (INC22),
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14. **Alteration of articles** – Sp Resolution, pvt into public or reverse – INC27
15. **Alteration of memorandum or articles to be noted in every copy.**
16. **Rectification of name of company** – identical name as per CG, regd proprietor → change name w/n 6 months

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55. **Issue and redemption of preference shares** – No irredeemable, A/A must authorize – 20 yrs, be fully pd., redeemed out of profits → CRR.

56. **Transfer and transmission of securities** – TD stamped, dated and executed, File transfer deed with co w/n 60 days, certificate lost – Indemnity bond, deliver certificates w/n 2 mths → incorporation, allotment, w/n 1 mth → transfer, w/n 6 mths → debentures.
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70. **Prohibition for buy-back in certain circumstances** – subsidiary, investment, default → redemption of DDP/divd, loan/interest.
71. **Debentures** – convertible deb → special resol, no voting rights, DRR, 500 deb holders = Trustee mandatory, SH12
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90. **Investigation of beneficial ownership of shares in certain cases.**
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92. **Annual return** - (MGT - 7), signed by director & CS/CSP, OPC → CS/Dir, 60 days – pd up 10 Cr/T/o 50 Cr → CSP – MGT 8, MGT-9 Extracts in BR.
93. **Return to be filed with Registrar in case promoters' stake changes** – MGT 10 – 15 days
94. **Place of keeping and inspection of registers, returns, etc.** - registered office, any other place → special resolution MGT – 14
95. **Registers, etc., to be evidence.**
96. **Annual general meeting** – gap not >15 mths, 1st AGM – 9 mths, others 6 mths, no National Holiday, business hrs, w/n →city, town/village
97. **Power of Tribunal to call annual general meeting.**
98. **Power of Tribunal to call meetings of members, etc.**
99. **Punishment for default in complying with provisions of sections 96 to 98.**
100. **Calling of extraordinary general meeting** – 1/10th → paid-up share capital/total voting power, Board w/n 21 days → call w/n 45 days = 3 mths.
101. **Notice of meeting** – 21 clear days, short notice → 95%, member, dir & auditor
102. **Statement to be annexed to notice** - financial statements, Board & Auditors Report, dividend, Dir & Auditors appointment, special business, shareholding interest → PDMK – 2% [ADDA]
103. **Quorum for meetings** – 5 (1000), 15 (5000), 30 (>5000),
104. **Chairman of meetings** - members personally present elect one of themselves
105. **Proxies** - MGT.11 [Ek ke Badle Ek], 48 hrs before meeting deposit proxy form. Inspect → 3 days notice. Proxy of not > 50 members and not > 10% in total
106. **Restriction on voting rights** – by A/A → if calls not paid,
107. **Voting by show of hands** – unless a poll is demanded → decide by show of hands
108. **Voting through electronic means** – all listed co/not < 1000 Shr hldrs.

109. **Demand for poll** – not < 1/10th of total voting power/ Rs. 5 lakh shares, 48 hrs, MGT.12, scrutinizers report → MGT.13
110. **Postal ballot - (SEB LO DRUVA)** – sale undertaking, elect director, buy-back, loans, objects cl, differential rights, registered office, unutilized amount, variation, A/A
111. **Circulation of members' resolution** - give notice to members + statement, 6/2 weeks, sum, Rs. 25000/-
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113. **Representation of corporations at meeting of companies and of creditors.**
114. **Ordinary and special resolutions** – votes cast in favour → exceed the votes cast against, not < 3 times
115. **Resolutions requiring special notice** – not < 1% total voting power/ Rs. 5 lakh, 3 months – 14 days before meeting, published 7 days before meeting
116. **Resolutions passed at adjourned meeting** - treated as passed on date on which it was in fact passed
117. **Resolutions and agreements to be filed** – 30 days → MGT – 14 [SAM gave Current of 180 W to 179]
118. **Minutes of proceedings of general meeting, meeting of Board of Directors and other meeting and resolutions passed by postal ballot** – 30 days - fair and correct summary, secretarial standards
119. **Inspection of minute-books of general meeting** - + resolution by postal ballot, registered office + business hours.
120. **Maintenance and inspection of documents in electronic form** –
121. **Report on annual general meeting** - listed co - MGT.15 → ROC w/n 30 days, signed & dated → CM/2 directors
122. **Applicability of this Chapter to One Person Company** – 98, 100 to 111 (not applicable)

CHAPTER VIII

DECLARATION AND PAYMENT OF DIVIDEND

The Companies (Declaration and payment of dividend) Rules, 2014

123. **Declaration of dividend** – from profits after dep, transfer to reserve, out of free reserves, bank w/n 5 days,
124. **Unpaid Dividend Account** – not paid w/n 30 days → transfer w/n 7 days UDA, w/n 90 days → statement, 12%, 7 yrs → IEPF
125. **Investor Education and Protection Fund** – 38 DOGS D²UG A¹R, used for → E-DROP

126. **Right to dividend, rights shares and bonus shares to be held in abeyance pending registration of transfer of shares**
127. **Punishment for failure to distribute dividends** – O → 2 yrs & 1000 pd, Co → 18% pa

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The Companies (Accounts) Rules, 2014

128. **Books of account, etc., to be kept by company** – true & fair view, registered office, inform ROC w/n 7 days of other place, electronic mode, 8 yrs
129. **Financial statement** – T&F view, Sch III, accounting Stds, subsidiaries → consolidated FS
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130. **Re-opening of accounts on court's or Tribunal's orders.**
131. **Voluntary revision of financial statements or Board's report.**
132. **Constitution of National Financial Reporting Authority** – a/cg and auditing stds, QUORM, power → investigate & CPC [DESI], Appellate Authority, New Delhi, books, CAG
133. **Central Government to prescribe accounting standards** –
134. **Financial Statement, Board's report, etc.** – FS+AR+BR → CM/2Dir (MD&CEO)+ CFO+ CS, DRS, BR signed → CP/2Dir(MD)
135. **Corporate Social Responsibility** – [500/1000/5] NW/T.O/NP, Committee → min 3 dir, min 1 ID, = 2% avg NP of past 3 yrs, Sch VII → formulate, recommend, monitor
136. **Right of member to copies of audited financial statement**
137. **Copy of financial statement to be filed with Registrar** – AOC4, w/n 30 days of AGM, OPC → w/n 180 days of close of FY
138. **Internal Audit** – CA/CWA/other professional, R13 → listed co & pub unlisted co [50,200,100,25] – [Pd, T/O, OLB, OD], pvt [200,100] – [T/O, OLB]

CHAPTER X

AUDIT AND AUDITORS

The Companies (Corporate Social Responsible Policy) Rules, 2014

The Companies (Audit and auditors) Rules, 2014

139. **Appointment of auditors** – 1st AGM to 6th AGM, written consent, ADT1 → ROC w/n 15 days of AGM, - individual = 1 term of 5 yrs, firm = 2 terms of 5 yrs, gap = 5 yrs, R5 – 10, 50, 50 [pub, pvt – cap, borrowings FI, Banks, Pub deposit]

- 140. Removal, resignation of auditor and giving of special notice** – remove by special resol after CG approval → ADT2, w/n 30 days of resignation ADT 3
- 141. Eligibility, qualifications and disqualifications of auditors** – CA, NO → Bc, e'ee, partner, [relative/partner –CHSA, 5 lakh debt, 1 lakh GS], business relation, dir/KMP, 20 cos, convicted 10 yrs [Mr. **BOP BORED 144** times]
- 142. Remuneration of auditors** – fixed in GM, Board fix 1st Auditors
- 143. Powers and duties of auditors and auditing standards** – access books/vouchers, Qualified report → state reason, auditing stds, ADT4 – report fraud to CG, 6 inquire, 10 content of Auditors Report
- 144. Auditor not to render certain services** – approval of BD/Audit Comm → a/cg, internal audit, FIS, actuarial, investment – advisory/banking svcs, management, other [MAFIA went to IBOO]
- 145. Auditors to sign audit reports, etc.**
- 146. Auditors to attend general meeting.**
- 147. Punishment for contravention.**
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The Companies (Appointment and qualification of directors) Rules, 2014

- 149. Company to have Board of Directors** – R 3, 4, 5 – individual, 3/2/1, 15, 1 WD (R3 - listed, 100 pd-up/300 T/o), in India 182 days, R4 - 1/3rd ID, R5 – Qualifications, (MSL COMFART), declaration, Sch IV, rem(197 & 198), ID not > 2 consecutive terms
ID – integrity, I not Promoter, Relative I Pecuniary relation, I 2%, I ID/Relative → KMP, E'ee/Prop/Partner, 2% voting, NPO, I R5
- 150. Manner of selection of independent directors and maintenance of data bank of independent directors** – R 6
- 151. Appointment of director elected by small shareholders** – R 7 – listed – 1 Dir, not > Rs. 20000/-
- 152. Appointment of directors** – R 8 – DIN, DIR2, DIR12, not < 2/3rd LRR, 1/3rd retire, vacancy filled at AGM
- 153. Application for allotment of Director Identification Number** – R 9 – DIR3.
- 154. Allotment of Director Identification Number** – R 10, 11, 12
- 155. Prohibition to obtain more than one Director Identification Number.**
- 156. Director to intimate Director Identification Number.**
- 157. Company to inform Director Identification Number to Registrar.**

- 158. **Obligation to indicate Director Identification Number.**
- 159. **Punishment for contravention.**
- 160. **Right of persons other than retiring directors to stand for directorship** – R 13 – 14 days before mtg, Rs. 1 lakh deposit, > 25% valid votes
- 161. **Appointment of additional director, alternate director and nominee director (AANC)** – hold off upto next AGM, 3 mths out of India, by Institution/CG/SG, vacancy filled by Board,
- 162. **Appointment of directors to be voted individually** – more dir → diff resol
- 163. **Option to adopt principle of proportional representation for appointment of directors**
- 164. **Disqualifications for appointment of director** – R 14 – U went to IIM & Court called relatives 152 times & 3 came, since **not filed** and **paid fees for 3D**.
- 165. **Number of directorships** – 20 of which public 10,
- 166. **Duties of directors** – AAG ICU
- 167. **Vacation of office of director** – **Disqualified** Directors **absents** for **184** days w/o **disclosing**, so **Court** says it's **immoral** & so **removes** from **office/employment**.
- 168. **Resignation of director** – R 15, 16 – DIR12, DIR11
- 169. **Removal of directors** – Ordinary resol, not apply to → not < 2/3rd of total by proportional representation
- 170. **Register of directors and key managerial personnel and their shareholding** – R 17, 18 – DIR12
- 171. **Members' right to inspect.**
- 172. **Punishment.**

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The Companies (Meetings of board and its powers) Rules, 2014

- 173. **Meetings of Board** – R 3, 4 – 1st mtg w/n 30 days, 4 mtg in yr, not > 120 days, 7 days' notice – short notice → 1 ID present + VC/AVM. OPC + Small + Dormant co → 1 mtg – each ½ yr – gap not < 90 days [On FB I saw my PAA]
- 174. **Quorum for meetings of Board** – 1/3rd of total strength, interested dir \geq 2/3rd of total strength – disinterested director 2.
- 175. **Passing of resolution by circulation** – R 5 – circulated in draft + necessary papers, noted at subsequent meeting. electronic means = E-mail or fax
- 176. **Defects in appointment of directors not to invalidate actions taken**

177. **Audit committee** – R 6, 7 – listed co + 10/100/50 → min 3 directors – majority ID, terms → RR SAVE ME, Auditors comments → ICS, Vigil mechanism – public deposits / Borrowings > Rs. 50 Cr.
178. **Nomination and remuneration committee and stakeholders relationship committee** – listed co + 10/100/50 → 3 or >NED, not < ½ = ID, CM not chair. SDD>1000 = SRC, Chairperson = NED
179. **Powers of Board** – call, buyback, securities, borrow, invest, loans, ADATO + R8 → PKAA [*Political Party, KMP, 2 Auditors*].
180. **Restrictions on powers of Board** – special resolution → [SIBD] sell, invest, borrow, director
181. **Company to contribute to *bona fide* and charitable funds, etc.** – prior permission → general meeting – not > 5% Avg NP of 3 preceding fin years.
182. **Prohibitions and restrictions regarding political contributions** – no limits
183. **Power of Board and other persons to make contributions to national defence fund, etc.** – any amount = no limits
184. **Disclosure of interest by director** – R 9 – 1st meeting and every fin year, **BC** - >2% or promoter, manager, CEO, **Firm** - director is a partner, owner or member, Contract Voidable
185. **Loan to directors, etc.** – R 10, 11, 13 – No LGS (loan/guarantee/security) – except MD & ordinary course of business. Allowed from holding to subsidiary
186. **Loan and investment by company** – R 11, 12 – invest 2 layers, No LGS, not > 60% paid-up capital+ free reserves+ sec prem a/c or 100% of free reserves and sec prem. a/c, whichever is more. Prior special resolution. Sanction of all Dir.
187. **Investments of company to be held in its own name** – R 14 – hold in subsidiary thru nominee. Register MBP 3 → preserved permanently
188. **Related party transactions** – R 15 – sps goods, sb property, lease, services, agent, office or place of profit, underwriting. Prior Ordinary resolution. Related party not vote.
189. **Register of contracts or arrangements in which directors are interested** – registers – R 16 – Form MBP 4
190. **Contract of employment with managing or whole-time directors** – NA - at registered office - contract of service with MD/WTD or written memorandum
191. **Payment to director for loss of office, etc., in connection with transfer of undertaking, property or shares** – no compensation → transfer undertaking or shares – R 17
192. **Restriction on non-cash transactions involving directors.**
193. **Contract by One Person Company** – terms in memorandum or recorded in Board minutes held next after entering into contract. Inform ROC w/n 15 days.

194. & 195 - OMMITTED.

CHAPTER XIII

APPOINTMENT AND REMUNERATION OF MANAGERIAL PERSONNEL

The Companies (Appointment and remuneration of managerial personnel) Rules, 2014

- 196. Appointment of managing director, whole-time director or manager** – R 3 – Not appoint MD/Manager together, MWM – 5yrs, (Age IPC) 21-70 yrs, +197, Sch V, MR1
- 197. Overall maximum managerial remuneration and managerial remuneration in case of absence or inadequacy of profits** – R 4, 5, 7 – 11%, MR2 → CG approval, max to MWM = 5/10%, commission = 1/3%, not include sitting fees/professional fees
- 198. Calculation of profits.**
- 199. Recovery of remuneration in certain cases.**
- 200. Central Government or company to fix limit with regard to remuneration** – R 6
- 201. Forms of, and procedure in relation to, certain applications** – R 7
- 202. Compensation for loss of office of managing or whole-time director or manager.**
- 203. Appointment of key managerial personnel** – R 8 – listed co, public – 10 Cr for COW, R8A → 5 Cr for → CS
- 204. Secretarial audit for bigger companies** – R 9 – listed co, public co – 50 cap/250 T/o, MR3
- 205. Functions of company secretary** – R 10 – compliance, standards, others

CHAPTER XIV

INSPECTION, INQUIRY AND INVESTIGATION

The Companies (Inspection, Investigation and Inquiry) Rules, 2014

- 206. Power to call for information, inspect books and conduct inquiries** – ROC → information/documents. ROC feels inadequate → call books
- 207. Conduct of inspection and inquiry** – produce → ROC → make copies/marks, CPC powers – DIA
- 208. Report on inspection made.**
- 209. Search and seizure** – MAD FS, enter place & seize books – 180 days, recall – 180 days. Identification marks, CRPC
- 210. Investigation into affairs of company.**
- 211. Establishment of Serious Fraud Investigation Office** – CG establish, Director, experts, and other officers and employees.
experts → banking, corporate affairs, tax, forensic audit, capital market, IT, law, other