



**WIN CORPORATE ADVISORS PRIVATE LIMITED**

**COMPANIES ACT 2013**

**AMENDMENT RELEVANT FOR INDIAN SUBSIDIARY OF FOREIGN COMPANY**

<b>SR. NO</b>	<b>PARTICULARS</b>	<b>CHANGES</b>	<b>IMPACT/ACTION POINTS</b>
1.	Resident Director	Minimum 1 resident director is compulsory for each Company	<p>Many Indian Subsidiary of foreign Company has all foreign directors. These Companies will have to appoint a resident Director.</p> <p>Resident Director means a director who has stayed in India for total period of not less than 182 days in previous calendar year.</p>
2.	Women Director	<p>Following Class of Companies shall have at least one women director on Board</p> <ol style="list-style-type: none"> <li>1. Every Listed Company</li> <li>2. Every public Company having:               <ul style="list-style-type: none"> <li><b>Paid-up capital</b> Rs.100 crore or more</li> <li><b>OR</b></li> <li><b>Turnover</b> of 300 crore or more</li> </ul> </li> </ol>	Not applicable to Private Company. However if the Private company is subsidiary of foreign public company then it is deemed as a public company.
3.	Independent Director	<p>Every Listed Company shall have at least 1/3 of total number of directors as independent director and following Class of Companies [Central Government prescribed] shall have at least two independent director on Board</p> <ol style="list-style-type: none"> <li>1. Public Company having <b>paid up capital</b> of 10 crore or more <b>OR</b></li> <li>2. Public Company having turnover of 100 crore or more <b>OR</b></li> <li>3. Public Company having aggregate, outstanding loans, Debentures and deposits more than 50 crore</li> </ol>	Not applicable to private Company. However if the Private company is subsidiary of foreign public company then it is deemed as a public company.

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| 4. | Disqualification of director   | Directors identification Number (DIN) and Digital Signature Certificate (DSC) is Compulsory   | Every proposed director <b>need to have DIN</b> and DSC first.<br>The time for getting DIN for foreign director need to be taken into account and plan accordingly for holding a Board meeting in which he/she is proposed to be appointment as director. |
|    |                                | Person who is or has been director in any company, which fails to file Financial Statements or Annual Returns for 3 continuous Financial year or defaulted in repayment of deposits or defaulted in redemption of debentures shall not be eligible for appointment or re-appointment for 5 years from the date on which the company fails to do . | Every proposed/existing director need to ensure that <b>he/she is not director of any company who has committed said defaults.</b>  |
| 5. | Attendance of Board Meeting    | Director should attend at least 1 BM in 12 Months otherwise office of director shall become vacant.   | Company having resident or non-resident directors need to meet <b>at least once in a year.</b><br><br>Leave of Absence will not work.   |
| 6. | Vacation of office of director | Cease to hold directorship if he cease to hold office of employment in holding/subsidiary/associates  | This ensures that the person who leaves employment or office of group company, he /she cease to be a director of Indian company.  |
| 7. | Resignation of director        | Director also need to intimate Registrar of Companies apart from Company with detailed reasoning of its resignation within 30 days.<br>Director even after resignation will remain liable for offences occurred during his tenure.  | Direct communication by Director to Registrar to ensure resignation is not due to any adverse factors.  |
| 8. | Rotation of Auditor            | All listed company and below class of companies shall appoint or re-appoint an <ul style="list-style-type: none"> <li>• individual as auditor for more than <b>one term 5 consecutive years and</b></li> <li>• audit firm as auditor for more than <b>two terms of 5 consecutive years</b></li> </ul>   | This will have impact on those on that foreign company who appoint <b>same auditor</b> worldwide for all of their entities.   |

**Class of Company** where auditors need to be rotated compulsory.

1. All unlisted Companies having paid up share capital of Rs.10 crore or more;
2. All private limited Companies having paid up share capital of Rs.20 crore or more;
3. All Companies having paid up- capital of below threshold limit mentioned in (1) and (2) above, but having public borrowings from financial institutions, banks or public deposits of Rs.50 crore or more.

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| 9.  | Corporate Social Responsibility | Every Company satisfying any of the following criteria during any Financial year from incorporation till date<br>Net Profit- Rs.5 crore/more <b>OR</b><br>Net worth-Rs.500 crore/more <b>OR</b><br><b>Turnover- Rs.1000 crore/more;</b><br><br><b>Shall spent in every financial year at least 2%</b> of average net profits of the Company made during the 3 immediately preceding financial years | The directors need to ensure the profits are appropriately <b>spent</b> and not just apportioned for social activities.   |
| 10. | Penalties on director           | Very harsh penalties for furnishing inaccurate particulars or any act resulting into non-compliance of provisions of Companies Act, 2013 or other applicable laws are prescribed under companies Act, 2013 including for all foreign directors.   | Each director need to involve himself in the affairs of the company and <b>need to ensure</b> that company complies with all the applicable laws in India.  |
| 11. | Board meeting protocol          | Secretarial standards are made applicable, to be followed by all the companies for holding board meeting  | Extensive documentation need to be kept to show all meetings took place as per <b>Secretarial standards</b> including giving sufficient notice to all Directors and circulating minutes of the meeting, taking their consent on record etc. |
| 12. | Extra-ordinary general meeting  | The notice shall specify the place, date, day and hour of meeting and shall contain the business to be transacted at the meeting.<br><b>Extra-ordinary General Meeting shall be held at a place within India.</b>   | Previously Extra-ordinary general meeting were frequently held outside India since all the Shareholders are outside India.  |

13. Holding-Subsidiary Relationship      A private company which is a subsidiary of public company shall for the purpose of the Companies Act, 2013 will be deemed to be public company even such company continues to be a private company in its articles.      The Indian private subsidiaries of foreign public body corporate will be treated as public company and shall comply with all the provisions of public company

However as per subsidiary company definition the expression 'Company' includes Body Corporate. Hence if any foreign public company incorporates a private subsidiary in India, it will be treated as public company for the compliance purpose.

**Notes:**

1) *Please ignore gender reference.*

2) *This above views and information contained herein prepared by Win Corporate Advisors Private Limited (WCAPL) is intended to provide general information on a particular subject or subjects and are purely matters of interpretation and is not an exhaustive treatment of such subject(s). No responsibility or liability is accepted for any loss or damage howsoever arising that user or any of their respective partners, officers, affiliates, advisors or agents may suffer as a result of this material and the same is expressly disclaimed by us or any of our associates. The information is not intended to be relied upon as the sole basis for any decision which may affect you or your business and if the need so arises, have to be independently satisfied notwithstanding our views contained herein. Before making any decision or taking any action that might affect your personal finances or business, you should consult a qualified professional adviser.*

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**Thank You**