



IMPACT ANALYSIS OF PRIVATE LIMITED COMPANIES

05.10.2024

Jayanth Viswanathan, Managing Partner, RBJV & Associates
Practicing Company Secretaries

Private Limited Companies in India

As of 31st March 2024

Total Registered Companies	26,63,016	
Active of out these	16,91,495	
Private companies		16,19,248
Public companies		72,247

A majority of the active companies (about 80%) were operating in activities covered under five broad heads, namely,

Business Services – 28%	Community, Personal and Social Services 11%
Manufacturing – 20%	Construction – 8%
Trading – 13%	

Private Companies Incorporated between April to September 2024 – 81,779

April – 14,883	May – 14,933
June – 14,237	July – 13,764
August – 13,656	September- 10,306

Comparison of compliance between 1956 Act and 2013 Act

PARTICULARS	COMPANIES ACT 1956	COMPANIES ACT 2013	REMARKS
One Person Company	No provisions exist	Section 2(62) – Definition of OPC Section 3(1) – Formation of Company	With applicability of act, 2013 MCA had made special provisions for OPC
Registered office of the Company	Section 146	Section 12	With applicability of act, 2013 MCA had made changes in time limit for informing the registrar
Appointment of Auditors	Section 224	Section 139 (1) of the Companies Act, 2013 and pursuant to rule 4(2) of the Companies (Audit and Auditors) Rules, 2014	With applicability of act, 2013 MCA had made changes with respect to tenure of auditor and time limit for informing the registrar
Directors	Section 252 & 255	Section 149 & 152	With applicability of act, 2013 MCA had fixed the maximum number of directors and increased compliances for both company and director
Director KYC	No provisions exist	Rule 12A of the Companies (Appointment and Qualification of Directors) Rules, 2014	With applicability of act, 2013 MCA had introduced KYC for director

Comparison of compliance between 1956 Act and 2013 Act

PARTICULARS	COMPANIES ACT 1956	COMPANIES ACT 2013	REMARKS
Board Meeting	Section 285	Section 173	With applicability of act, 2013 MCA has increased compliances
Annual General Meeting	Section 166	Section 96	With applicability of act, 2013 MCA had decreased the months for holding first AGM
Financial Statement	Section 210	Section 129 & 137 of the Companies Act, 2013 and sub-rule (1) of Rule 12 of Companies (Accounts) Rules, 2014	With applicability of act, 2013 MCA had changed the format
Annual Return	Section 159 & 160	Section 92(1) of the Companies Act, 2013 and rule 11(1) of the Companies (Management and Administration) Rules, 2014	With applicability of act, 2013 MCA had introduced new format for small companies
Small Company	No Provision	Sec. 2(85)	Small company has been defined and redefined as PC – Rs. 4 Crores and Turnover Rs. 40 Crores.

Comparison of compliance between 1956 Act and 2013 Act

PARTICULARS	COMPANIES ACT 1956	COMPANIES ACT 2013	REMARKS
Board's Report	Section 217	Section 129 & 134	With applicability of act, 2013 MCA had introduced abridged version of report
Return of Deposit	Section 58AA	Rule 16 and 16A of the Companies (Acceptance of Deposits) Rules, 2014	With applicability of act, 2013 MCA had introduced Form DPT-3 to be filed by every company whether received deposit or not
Secretarial Audit	No Provisions exist	Section 204	With applicability of act, 2013 MCA had introduces audit for particular class of companies
Corporate Social Responsibility	No Provisions exist	Section 135	With applicability of act, 2013 MCA had introduced new topic and have continuously working on making mandatory for most of the company.

2015 & 2017 Circular – Exemptions for Private Limited Companies

The 2013 act –
when it came
gave a lot of
Restrictions to
even private
companies

2015 & 2017
circular gave a
lot of exemptions

As good as 1956
Act itself

- Deposits
- Loans to Directors
- Related Party Transactions
- Interested Director voting
- Audit, CSR Committee
- Removal of Managerial remuneration restriction
 - Dormant Companies
- Start up ESOPs & Sweat Equity
- Cash Flow Statement exempt

& many more

Basic Compliance of a Private Limited Company

1st Quarter Compliances

Annual Disclosures 1. MBP -1 2. Declaration under Section 164 (2)
Filing of BEN form for any updation in Significant Beneficial Ownership
Website compliances, if they have a website Statutory Register Maintenance, and Share certificates, Digital Signature Validity
Circular resolution for opening of "Unspent CSR Account"
KYC for directors
Pas 6 filing during the 1 st quarter
Changes in Directorship holding
Notice Agenda of first Board meeting
Notice Agenda of first CSR Meeting

First Board meeting to be held by
Circulation of draft BM minutes of 1st Board meeting
Circulation of signed minutes of previous Board meeting
Response from Director for 1st Board Meeting
Entry in Minutes book of Board meeting
First CSR meeting to be held by
Unspent CSR amount to be transferred to special account - ongoing project
Circulation of draft minutes of CSR meeting
Circulation of signed minutes of previous CSR meeting
Response from Director for CSR Meeting
Entry in Minutes book of CSR meeting
MSME Form
DPT 3 – Annual Return
Foreign Liabilities and assets- FLA return (Provisional/audited financial)

Basic Compliance of a Private Limited Company

2nd 3rd n 4th Quarter Compliances

Second Board meeting to be held:

Circulation of BM minutes of 2nd Board meeting
 Circulation of BM signed minutes of previous meeting
 Response from Director for 2nd Board Meeting
 Entry in Minutes book of Board meeting
 AGM notice to be despatched to Shareholders, Statutory Auditors and Directors
 Annual General Meeting
 Signing of AGM minutes
 FLA (revised)
 Unspent CSR amount to be transferred to fund specified in schedule VII - on Other than ongoing project
 ADT 1 for Appointment of Auditors if any
 AOC 4 – Annual Account
 Dir 12 for change in designation, if any

Third Board meeting to be held:

Circulation of signed minutes of previous meeting (Board)
 Circulation of draft minutes of current meeting (Board)
 Response from Director for current Board meeting
 Entry in Minutes book BM minutes of current Board meeting
 Form CSR 2 as an addendum to Form AOC 4
 MSME Form - I & APR if applicable
 Transfer to "unpaid dividend account" & IEPF Compliances
 MGT-7 - Annual return + MGT - 8 if applicable & Pas 6
 Notice Agenda of Fourth Board meeting

Fourth Board meeting to be held:

Circulation of signed minutes of previous meeting (Board)
 Circulation of draft minutes of current meeting (Board)
 Response from Director for current Board meeting
 Entry in Minutes book BM minutes of current Board meeting

MSME Form

- Auditor's Qualification for MSME Payments Beyond 45 Days

Legal Provisions:

- MSMED Act, 2006: Payment to MSMEs must be made within 45 days of acceptance of goods/services.
- Interest on delayed payments: 3x RBI bank rate as per Section 16.

Companies Act, 2013:

- Practically in V3 form – In case of even one delay, we may have to disclose the entire list of MSME payments in the excel
- Disclosure of unpaid MSME dues beyond 45 days in the Director's Report.
- Auditor's Responsibility: As per CARO 2020 (Clause vii(b)), auditors must –
 - Report default in MSME payments beyond 45 days.
 - Disclose amounts and interest outstanding.
- Auditor's Report Qualification: SA 705 : Qualified opinion if payments exceed 45 days, non-compliance with MSMED Act.

Example: "The company has not made payment to MSMEs within the stipulated 45 days as required by the MSMED Act. No interest provision has been made for the delayed payments, leading to non-compliance."

Disclosure: Total dues to MSMEs and interest accrued must be disclosed in Notes to Accounts.

DPT 3 Form

Chartered Accountant's Certificate for Form DPT-3

- **When Required:**
 - For filing **annual returns of deposits** or **loans/monies not considered as deposits** under the **Companies Act, 2013**.
 - CA must certify the accuracy of amounts and compliance with deposit rules & the form incase it is Deposit
- **Key Pain Points:**
 - **Classification** of deposits vs. non-deposit borrowings – Esp when a shareholder gives a loan ‘it is a deposit’
 - Verifying **outstanding deposits** and matching with balance sheets, before June quarter itself, while actual financials are being finalized by corporates in September and they object to qualifications.
 - Ensure Exemptions like 100% PC + Free Reserve & start up – 5 years since incorporation & Should not be subsidiary & Should not have defaulted in repayment of borrowing and the likes
- **Consequences:**
 - Company Penalty: Fine of ₹1 crore or twice the deposit amount, extending to ₹10 crore.
 - Officer Penalty: Fine of ₹25 lakh to ₹2 crore, with imprisonment up to 7 years.
 - Ongoing Default: Additional fine of ₹5000 per day for continuing defaults.

PAS 3 & SH 7 Form

Key Areas of Focus for the Auditor:

1. **Reconciliation with MCA Master Data:** Ensure the company's filings (PAS-3, SH-7) reconcile with its **Master Data** available on the MCA portal, especially for authorized and issued share capital.
2. **Equity vs. Preference Share Classification:** Confirm that both the **allotment of shares** and the **authorized capital** (if applicable) are properly mapped between **equity** and **preference shares** in PAS-3 and SH-7.
3. **Timely Filing of PAS-3:** Verify that PAS-3 is filed within the prescribed time frame, i.e., within **15 days** of allotment.
4. **Private Placement Compliance:**
 - a. PAS-4 and PAS-5 must be in place for private placement.
 - b. Ensure compliance with the **consideration requirement** (i.e., no allotment before receiving money).
5. **Rights Issue Compliance:** Verify that rights issue offers are made to **existing shareholders**, and **PAS-3** is properly filed.

PAS 6 Form – Demat of Shares

S No.	Type of Company	Dematerialisation as per Rule 9A/9B	Remarks
1	Unlisted Public Company	Rule 9A	-
2	Private Company (other than mentioned below)	Rule 9B	-
3	Government Company	Not required	Exempted under Rule 9B(6)
4	Small Company	Not required	Exempted under Rule 9B(1)
5	Small Private Company which is a subsidiary of another Private Company	Rule 9B	As per the definition of a small company, it cannot be classified as such if it is a holding/subsidiary of another company. It will be deemed to be a normal private company.
6	Private Company which is a subsidiary of a Public Company	Rule 9A	A Private Company which is a subsidiary of a Public Company is deemed to be a public company (proviso to sec 2(71))
7	Section 8 Private Company which meets the thresholds for small company classification as per the Companies Act, 2013	Rule 9B	A Section 8 company cannot be classified as a small company, irrespective of its paid-up share capital and turnover. Therefore, it will be treated as a normal private company.

PAS 6 Form – Demat of Shares

□ Key Compliance Requirements:

- **Form PAS-6:** Private and unlisted public companies must file Form PAS-6 with the Registrar within 60 days of the conclusion of each half-year.
- **Promoter and Key Management Compliance:** Before issuing any securities (including rights issues, private placements, or buybacks), all securities held by **promoters, directors, and key managerial personnel** must be dematerialised.
- **Demat before Transfer/Subscription:** Securities must be dematerialised before any **transfer or subscription** by holders. **Therefore Articles of Association should be modified to that extent that without board approval – title is invalid**
- **Ensure to report more than 5% shareholding in financials at the end of the year is matched as per the Demat Statement given by Depositories or RTA – ensure that you obtain a signed certificate.**
- **For those who have not demated – They should have not gone for Transfer or issue of shares – otherwise it will be deemed violation.**

Common Errors in Financial Statements of Private Limited Companies

- ❖ CIN Number not mentioned in Financials
- ❖ Director DIN not mentioned in many financials
- ❖ Balance Sheet, P&L & Auditors report dates are different
- ❖ Auditor's report mentions Caro 2016 instead of CARO 2020 or IFC not applicable however mentioned as Applicable
- ❖ Mismatch in Financials note number and notes, as such
- ❖ Comparison of Last years 'current financials' & this year 'previous Financials' would be different (apart from re-grouping/classification)
- ❖ EPS and Diluted EPS calculation may be wrong in a few instances
- ❖ RPT transactions in Notes to accounts may not match with Financials
- ❖ MSME – Company would have filed NIL returns, Financials will show Dues
- ❖ Notes on accounts may not be signed by Auditors & Directors
- ❖ Company to maintain Audit Trail in respect of all entries – If not from FY 2023-24 It has to be qualified in the Audit report

Specific Adjudication orders against Statutory Auditors

- ❖ Non Quantification of Related party Transaction – Violation of IND As 24 – Auditor Penalised Rs. 50,000 (SUN PHARMACEUTICAL INDUSTRIES LIMITED)
- ❖ Notes to accounts quantifies Related Party Transactions – However Company has not maintained minutes/Registers as required under Companies Act 2013 – 1,05,000 penalty (Teleone Consumer Product Pvt Ltd)
- ❖ Company had not filed its returns from 2017 to 2022, upon notice being sent response from company is as under: (Manpur Rubber Industries Pvt Ltd)

4. Whereas, this office has received a reply vide email dated 29.05.2023 has been received from the director stating that *“No statutory returns, Financial Statements and Annual Returns could be filed after 31st March 2016 due to implication of a Chartered Accountant under false and frivolous ground and further getting him arrested by Mr. Abimanyu Singh in a family rift, no professional agreed to conduct audit or provide any services to the company, the DIN of the directors have been deactivated. However, reply of the company is found unsatisfactory. Hence, it appears that the provisions*

Adjudication orders against Statutory Auditors

Inspection was carried out of the Company by the ROC under section 206 & Auditor penalised

Rs. 90,000
penalty
levied

STRONG INFRACON Pvt Ltd amalgamated with Elite Realcon Pvt Ltd

1. Non disclosure of KMP, RPT in the FS
2. Non disclosure of details of Investment in FS
3. Non disclosure of Short term Investments in FS
4. Non disclosure of details of SH holding more than 5% in FS
5. Non disclosure of sundry creditors

Specific Adjudication orders against Statutory Auditors

- ❖ A typo graphical error cost the Auditors Rs. 20,000 & an adverse order against them – Company has losses while audit report reads Company does not have any losses.
- ❖ Company has not complied with AS 15 (Employee Benefits) – Auditors accepted the default and paid Rs. 10,000 *4 years.
- ❖ Long term loans and Advances were reduced from, which means Loans and Advances were paid back to the Company. Long Term Loans and Advances if repaid by the borrower company and received by the subject company, should be shown under Cash Flow from Investing Activities as per AS – 3 – Auditor has not qualified the same – Hence Penalised Rs. 10,000/-

Specific Adjudication orders against Statutory Auditors

- ❖ Between March to September 2024 – 8 instances of Auditor penalized between Rs. 10,000 to Rs. 2,40,000 across multiple ROCs for non-performance of duties.
 - ❖ Non-disclosure of RPT
 - ❖ Aggregate amount of loan not given in Schedule III
 - ❖ MSME dues not mentioned in the report
 - ❖ Sundry Debtors not classified as Secured, Unsecured or Doubtful
 - ❖ Failed to mention Investment is in subsidiaries/associates etc

jayanth.v@akshayamcorporate.com

Ph: 99621 56708



Thank you for listening, any questions?



Head Office || Flat No.7 & 10 || Door No. 10 || Madhans || South Canal Bank Road || Mandavelipakkam || Chennai 600028



Branch office || No. 56, Ground Floor || The Platform || Sanganth IPL || GIFT City || Gandhinagar || Gujarat