




Companies Act 2013



Background

- ▶ Company = Latin word – com + pains.
- ▶ Com means with or together & pain means bread.
- ▶ Its referred as a group of people/persons who would take their meals together.
- ▶ A company is nothing but an assemblage of people who have come together for some specific purpose, economic or otherwise & who have incorporated themselves into a disticnt legal entity in the form of a corporation for that purpose.



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- ▶ The Companies Act does not define a company in terms of its characteristic features.
 - ▶ Sec 3(1)(i) reads ‘ a company means a company formed & registered under the Act or an existing company as defined in Sec 3(1)(ii).
 - ▶ Sec 3(1)(ii) states, “an existing company means a company formed & registered under any previous Company Law”.
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Definitions

- ▶ A company is an association of many persons who contribute money or monies worth to a common stock & employ in some trade or business & who share the profit & loss arising therefrom.
- ▶ The common stock so contributed is denoted in money & is the capital of the company. The person who contribute to it or whom it pertains to are members.
- ▶ The proportion of capital to which each member is entitled is his share. The shares are always transferable albeit the right to transfer is often more or less restricted. – Lord Justice Lindley



Definitions

- ▶ A corporation is an artificial being, invisible, intangible, existing only in contemplation of the law. Being a mere creation of law, it possesses only the properties, which the Charter of its creation confers upon it, either expressly or incidental to its very existence.- Chief Justice Marshall.
 - ▶ A company is an artificial person created by law, having a separate entity, with a perpetual succession and a common seal. – Prof. Henry
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Features of a Company

- ▶ Independent legal entity
- ▶ Limited liability
- ▶ Everlasting existence
- ▶ Separate property
- ▶ Flexibility of investment
- ▶ Common seal
- ▶ Capacity to sue & being sued
- ▶ Separation of ownership & management
- ▶ Proportionate representation
- ▶ Right to own property.



Types of Companies

- ▶ Public & Private Companies
- ▶ Limited & Unlimited Companies
- ▶ Sec 25 companies
- ▶ Parent & Subsidiary Companies
- ▶ Government Companies
- ▶ Foreign Companies
- ▶ One person company (OPC)



Private Company

- ▶ A private company means a company that has a minimum paid up capital of Rs 1,00,000 or such higher paid-up capital as prescribed & by its articles:
- ▶ Restricts the right to transfer its shares if any
- ▶ Number of its members are 200
- ▶ not including a) persons who are in the employment of the company,



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- ▶ b) persons who have been formerly in the employment of the company, were the members of the company while in that employment & have continued to be members after the employment ceased, c) prohibits any invitation to the public to subscribe for any shares in, or debentures of, the company & d) prohibits any invitation or acceptance of deposits from persons other than its members, directors or their relatives. Sec3(1) (iii)
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Public Company

- ▶ A public company means a company that is:
- ▶ Not a private company
- ▶ Has a minimum paid up capital of Rs5,00,000 or such higher paid up capital, as may be prescribed



Limited & Unlimited Company


- ▶ A limited company is one wherein the liability of its members is limited.
- ▶ The liability of members of an unlimited company is unrestricted. Companies Act does not permit formation of an unlimited company.



Sec 25 Companies

- ▶ As per the Companies Act, 1956, the name of public limited company must end with the word “Limited” & the name of a private limited company must end with the word “Private Limited”. However under Sec 25, the Central Govt may allow certain companies to remove the word “Ltd or Pvt Ltd from their names if the following conditions are satisfied:



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- ▶ 1) the company is formed for promoting commerce, science, art, religion, charity or any other socially useful objects & does not hv profit motive.
 - ▶ 2) the company does not intend to pay dividend to its members but apply its profits & other income in proportion of its objectives. However if any time the company declares dividend, it would loose the status of company in which the public are substantially interested
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Parent & Subsidiary Company

- ▶ A company shall be deemed to be subsidiary of another company if: a) that other company controls the composition of its Board of Directors, b) that other company holds more than half in face value of its equity share capital,
 - c) where the first mentioned company is subsidiary company of any company, which in turn is a subsidiary of that other company.



Govt Companies

- ▶ A company in which not less than 51% of the paid up share capital is held by – a) the Central Govt , b) any State Govt, c) partly by Central Govt & partly by 1 or more state govts.



Foreign Company

- ▶ As per Sec 2 (23A) Foreign Company means a company which is not a domestic company.
- ▶ Accordingly a foreign company is one which in respect of its income, is not liable to tax under the income-tax Act 1961 & which has not made the prescribed arrangements for the declaration & payment within India, of the dividends payable out of such income.



Illegal Association

- ▶ Under this act, not more than 10 persons can come together on any banking business & not more than 20 persons can come together for carrying on any type of business, unless the association is registered under the Companies Act. Any association which does not comply with the norms is an illegal organisation.
- ▶ But there are few exceptions to this rule: Hindu Joint family & Non-commercial assoc.



Registration Office

- ▶ A Company shall on and from 15th day of its incorporation to have a Registered Office capable of receiving and acknowledging communications and notices as may be addressed to.
- ▶ The Company is also required to furnish the Verification of Registration of its Registered office within a period of 30 days of its incorporation in a prescribed manner.
- ▶ Notice of every change of situation of the registered office shall be given to the Registrar within 15 days of the change who shall record the same



Memorandum Of Association

- ▶ The most important document to be filed by any proposed company.
- ▶ It sets out the constitution of the company & specifies its relationship with the outside world.
- ▶ It also states the authorized share capital of the proposed company & names of its first or permanent directors.
- ▶ It defines the scope & limitation of projected company.
- ▶ It is considered as unalterable charter of the company.
- ▶ It becomes a public document as soon as the company gets registered.
- ▶ It forms an outer framework within which the company works.



Contents of MOA

- ▶ Name clause Sec 13(1)(a)
- ▶ Registered office clause Sec 13 (1)(b)
- ▶ Objects Clause Sec 13 (1)(c) (d)
- ▶ Liability Clause Sec 13 (2)
- ▶ Capital Clause Sec 13 (4)(a)
- ▶ Association Clause Sec 13 (4) (c)



Article Of Association

- ▶ Is the chief instrument which contains the rules & regulations for the internal administration of the company.
- ▶ Sec2(2) of the Act , “articles “ mean the AOA of a company as originally framed or as altered from time to time in pursurance of Companies Act 1956



Contents of AOA

- ▶ Powers, duties, rights & liabilities of Directors
- ▶ Powers, duties, rights & liabilities of Members
- ▶ Rules for meetings of the company
- ▶ Dividends & reserves
- ▶ Borrowing powers of the company
- ▶ Share warrants



Contents of AOA

- ▶ Alteration of capital
- ▶ Calls on shares
- ▶ Transfer & transmission of shares
- ▶ Forfeiture of shares
- ▶ Surrender of shares
- ▶ Voting power of members
- ▶ Accounts & Audit
- ▶ Winding up etc



Prospectus

- ▶ A prospectus is a legal document that contains all the material information investors need about the company.
- ▶ Sec 2 (36) Prospectus means any document described or issued as a prospectus & includes any notice, circular, advertisement, or other document inviting deposits from the public for the subscription or purchase of any shares in or debentures of, a body corporate.



Prospectus

- ▶ Part I – General info, Capital structure of the co, particulars of the issue, co management & projects, risk factors etc.
- ▶ Part II – reports/financial info to be set out, statutory info etc
- ▶ Part III – contains the explanations to the terms & conditions, provisions applying in Part I & II



Kinds of Company Meetings

- ▶ Company meetings can be divided into 3 parts: Meeting of members, Board meetings & Other meeting .
- ▶ In case of Board Meeting there are 2 categories : General Meeting & Class Meeting.
- ▶ In General Meeting you have AGM & Extraordinary General Meetings.
- ▶ Other meetings include Meetings of Debenture Holders & Meetings of Creditors.



Statutory Meeting (removed as per
2013)



AGM

- ▶ AGM must be held by every type of co – public or pvt. , limited by shares or by guarantee , with or without share capital or unlimited company – once a year [Sec 166(1)]. AGM is an important platform by which the general body of shareholders finds an opening to exercise their power of control. Every company must in each year hold an AGM.
- ▶ 21 days notice to be given either in writing or in electronic format



AGM

- ▶ At every AGM, the following matters must be discussed & decided. Since such matters are discussed at every AGM, they are known as ordinary business. All other matters & business to be discussed at the AGM are special business.
- ▶ Matters constitute ordinary business are :
- ▶ 1. Consideration of final accounts, director's report & auditor's report.
- ▶ 2. Declaration of dividend.
- ▶ 3. Appointment of directors in place of those retiring.
- ▶ 4. Appointment of & fixing of the remuneration of the statutory auditors.



AGM

- ▶ In case of any other business (special business) has to be discussed & decided upon, an explanatory statement of the special business must also accompany the notice calling meeting.



Consequences of not holding AGM

- ▶ 1. Any member of the co may apply to the National Company Law Tribunal (NCLT) which may in turn call or direct the calling of the meeting & give such ancillary or consequential directions as it may consider expedient in relation to calling, holding or conducting the meeting.
- ▶ 2. A fine which may extend up to Rs.5000 on the company & every officer of the company in default , may be levied & for continuing default, a further fine of Rs 250 per day for the duration of the default may be levied (Sec 167)



Extraordinary General Meeting

- ▶ Regulation 47 of Table A provides “All general meetings other than annual general meetings shall be called extraordinary general meeting”. Thus every general meeting other than the statutory meeting & the annual general meeting or any adjournment thereof, is an EGM. Such a meeting is usually called by Board of Directors in emergencies, say for taking up some urgent business that cannot be kept pending till next AGM.



EGM

- ▶ EGM may be called by any four :
- ▶ The Board of Directors
- ▶ The Board of Requisitions
- ▶ By the requisitionists
- ▶ By NCLT



CLASS MEETING

- ▶ Class meetings are the meetings which are held by the holders of the particular class of shares (ie where the share capital of a co is divided into different classes of shares) eg preference share holders. Such meetings are normally called when it is proposed to alter, vary or affect the rights of the particular class of shareholders.
- ▶ At such mtg's these members discuss the pros & cons of the proposal & vote accordingly.



CLASS MEETING

- ▶ Class meetings are held to pass resolutions, which will bind only the members of the shareholders class concerned & therefore only members of that class can attend & vote.
- ▶ All resolutions in the class meeting are required to be passed as special resolutions.



Board Meetings

- ▶ Board meetings refer to the meetings of Directors. Protection of the investor is the primary theme of the Act.
- ▶ The Act provides the shareholders a forum of self-protection & then leaves them to a large extent to take care of themselves. The forum is a general meeting of shareholders.
- ▶ The directors are supposed to act collectively as a single unit, called the board hence the term board meeting.



Board Meetings

- ▶ Rules for Board Meeting:
- ▶ Periodicity – pvt or pub co shall hold atleast 1 mtg of the board within 30 days of its incorporation.
- ▶ This meeting shall be called by giving notice not less than seven days
- ▶ Every officer of the company whose duty is to give the notice under this section and who fails to do so shall be liable for the penalty of 25000/- rupees
- ▶ Not more than 120 days shall intervene between 2 consecutive meetings of the Board



Board Meetings

- ▶ Day of meeting – Meeting shd be held during business hours & only on working day, it may be valid on a public holiday too.
- ▶ Time of meeting – Meeting can be held during business hours or outside business hours. There is no restriction in the act on this.
- ▶ Place for meeting – Board meeting can be held any place, be it company registered office or head office or any other premises within or outside the city, town, village or state in which the registered office of the company is situated. A board meeting can also be held at a foreign loc if the situation so warrants.



OTHER MEETINGS

- ▶ Meeting of Debenture Holders – at such mtgs matters pertaining to the variation in terms of security provided by the company against the debentures or to alteration of their rights are discussed. All matters connected with the holding, conduct & proceedings of the meetings of the debenture holders are normally specified in the Debenture Trust Deed. The decisions at the mtg made by the prescribed majority are valid & lawful & binding upon the minority.



OTHER MEETINGS

- ▶ Meeting of Creditors – a company either as a running concern or in the event of winding up has to make certain arrangements with its creditors. Hence the meeting of creditors is called for such a purpose.
- ▶ In case of winding of a company, a meeting of creditors & contributors is held to ascertain the total amount due by the company & also to appoint a liquidator to wind up the affairs of the company.



Requisites of Valid Meeting

- ▶ It must be duly convened. The persons calling the meeting must be authorised to do so. Proper authority means Board of directors, members or NCLT.
- ▶ Proper & adequate notice must have been given to all those entitled to attend.
- ▶ The meeting must be legally constituted. There must be a proper authority in chair ie the Chairman. The rules of quorum must be maintained as per the act & AOA should be duly complied to.
- ▶ The business at the meeting must be validly transacted. The meeting must be conducted in accordance with the regulations governing the mtg.



Proxy

- ▶ A member may appoint another person to attend & vote at a meeting on his behalf. Such other person is known as Proxy.
- ▶ Sec 176 – in case of a company having a share capital & in case of other company, if the Article so authorise, any member of a company entitled to attend and vote at a meeting of the company shall be entitled to appoint another person (whether a member or not) as his proxy to attend & vote instead of himself.



Proxy

- ▶ The member appointing a proxy must deposit with the company a proxy form at the time of the meeting or prior to it giving details of the proxy appointed.
- ▶ The proxy form must be in writing of & be signed by the member or his attorney duly authorised in writing or if the appointer is a company, the proxy form must be under its seal or be signed by an officer or an attorney duly authorised by it.
- ▶ A proxy is not entitled to vote except on a poll. Ie the proxy cannot vote on show of the hands. The proxy can be revoked by the member at any time (ie before the mtg is held) by giving proper intimation to the company on this count. Proxy is automatically revoked by the death or insolvency of the member.



Quorum

- ▶ Quorum means specified minimum number of qualified persons whose presence is necessary for conducting legally binding business at a meeting.
- ▶ Sec 174, the quorum for the Board meeting shall be $1/3^{\text{rd}}$ of its total strength or 2 directors whichever is higher, while the quorum for any general meeting shall be 5 members present in case of public co & 2 members personally present in case of pvt co.
- ▶ A meeting without the quorum is invalid & decisions taken at such a meeting are not binding.



Agenda

- ▶ The term agenda in literal term means things to be done. In the context of the company meetings it is a statement of the businesses to be transacted at a meeting. It also sets out the order in which the business is to be dealt with. The agenda helps in systematic & smooth transaction of business at the meeting without omission of any item of importance.





Minutes

- ▶ Every company must keep minutes containing details of all proceedings at the meeting.
- ▶ The minutes are the gist of the discussions at the meeting & the final decisions taken there at. It normally includes the resolutions actually passed. The pages of the minutes book must be recorded therein within 30 days of the meeting. Pasting or attaching of the papers is not allowed.
- ▶ Each page of minute book must be initialed or signed & the last page of the record of proceeding of each meeting in such books must be signed.



Minutes

- ▶ In case of a meeting of the Board of Directors or its committees, the minutes must also state the names of the directors present at the meeting & names of directors dissenting from or not concurring with a resolution passed at the meeting.
- ▶ The Chairman may exclude from the minutes any matter which are defamatory, irrelevant or immaterial or which are detrimental to the interest of the company. The discretion of the Chairman with regard to the inclusion or exclusion of any matter is absolute & unfettered.



Chairman & its role in meeting

- ▶ The chairperson is there to preside over a mtg.
- ▶ The chairperson is generally the MD unless the articles provide otherwise.
- ▶ If there is no chairperson or he/she is not present within 15 min after the appointed time of the mtg or is unwilling to act as a chairperson, the directors present may elect one among themselves to chair the mtg.



Chairman & its role in meeting

- ▶ If no director is willing to act as a chairperson or if no director is present within 15 min after the appointed time of the mtg, the members present shd choose one among themselves to chair the mtg.
- ▶ If after the election of a chairperson on a show of hands, a poll is demanded & taken & a different person is elected as chairperson, then that person will head the mtg from that point.



Duties of the Chairman

- ▶ Without the chairperson a mtg is incomplete. He is said to be the regulator of the mtg.
- ▶ 1. He/she must ensure that the mtg is properly convened & constituted ie the proper notice is given, quorum is maintained etc.
- ▶ 2. He /she must ensure that the relevant provisions of the act & AOA are observed.
- ▶ 3. He /she must ensure that business is taken in order to set the agenda & no business which not mentioned in the agenda is taken up unless agreed by the members.



Duties of the Chairman

- ▶ 4. He/she must impartially regulate the proceedings of the mtg & maintain discipline at the mtg.
- ▶ 5. He/she has the power to adjourn the mtg in case of indiscipline at the mtg. He/she must exercise the power of adjournment of the mtg, should he/she in good faith feel that such a step is necessary.
- ▶ 6. He/she must exercise his/her power to order a poll correctly & must order it to be taken when deemed properly.
- ▶ 7. He/she must exercise his/her casting vote bonafide in the interest of the company.



Director

- ▶ A Director refers to any person occupying the position of director, by whatever name the person is called – Sec 2 (13) .
- ▶ Accordingly directors are those who perform the directing function irrespective of the label attached to them. Apart from this obligation, there are no formal academic or professional qualification or an upper age limit fixed by the law for electing or appointing a person as a director. Prescribed companies are required to appoint atleast 1 women Director
- ▶ In case of resignation the Director has to send a copy and reason for the same to the Registrar within 20 days.



Disqualification of Director

- ▶ Sec 274(1) – a person shall not be capable of being appointed director of a company:
 - ▶ If he is found of unsound mind
 - ▶ If he is an insolvent
 - ▶ If he has applied as insolvent & application is pending
 - ▶ If he is convicted by court for any offence involving moral turpitude & sentence respect thereof to imprisonment for not less than 6 months, & period of 5 yrs has not elapsed from the date of expiry of the sentence.
 - ▶ The office of the Director will be vacant in case he absents himself from all the meetings of the Board of Directors held during a period of 12 months with or without seeking leave of absence of the Board



Appointments

- ▶ Appointment of first directors of a new company are named in its articles. The first directors appointed shall act until first AGM. Under Sec 256, in the first AGM the shareholders shall elect & appoint the directors on regular basis.
- ▶ In case of public or pvt company, unless the article provides atleast $\frac{2}{3}$ rd of the total number of directors shall be liable to retire by rotation. Thus only $\frac{1}{3}$ rd of the total number of directors shall be non-rotational or permanent directors.



Board of Directors

- ▶ 3 categories of Board of Directors :
- ▶ Additional Directors (Sec 260)
- ▶ Casual Directors (Sec 262)
- ▶ Alternate Directors (Sec 313)



Additional Directors

- ▶ The Board of Directors either at the meeting of the Board or by passing a special resolution can appoint additional director/s on the Board within the ceiling prescribed, if authorised by AOA.
- ▶ They will enjoy the same powers & rights as other directors but shall hold office only upto the date of next AGM. They may be re-elected at the AGM & continue as directors.
- ▶ Since the additional directors shall hold office only till date of next AGM, if the AGM is adjourn by any reason, they shall vacate their office on the due date, notwithstanding the adjournment of AGM.



Casual Directors

- ▶ A casual vacancy is one that is caused by death, resignation, disqualification or failure of the elected director to presume his office & not retirement in normal course.
- ▶ Any person so appointed shall hold office till the expiry of the term of the director, whose post he/she has filled (Sec 262(2)). Thus the appointment of a casual director is like a stop-gap arrangement.



Alternate Directors

- ▶ At times, a director of the public co or pvt co, which is a subsidiary of the public co maybe out of India or out of State in which the board meetings are held for more than 3 months. In such circumstances, a person can be appointed as Alternate Director by the Board if it is so authorised by the articles of the company or by the resolution passed by general meeting. As per sec 313 – such appointment, he/she shall act as director in the absence of the director for the above stated reasons.



Alternate Directors

- ▶ An alternate director is subject to all statutory obligations & responsibilities of other directors. Since the alternate director only fills a temporary vacancy in the office of a director, he ceases to function when the original director comes back to India or the state where meetings of the Board are ordinarily held.
- ▶ Moreover the appointment of the alternate director terminates along with the termination of the appointment of the original director. Thus if the original director resigns, the alternate director is supposed to vacate his office & no separate resignation or retirement or removal is necessary.



Managing Director

- ▶ The board if wishes one person to be particularly accountable for the day to day affairs of the company's business on their behalf, that person is generally appointed as Managing Director or the whole time Director. This MD would exercise his powers subject to the superintendence, control & direction of the Board of Directors.



Managing Director

- ▶ Sec 2(26), MD may be appointed by the virtue of:
- ▶ An agreement with the company or
- ▶ A resolution passed by the company in General Mtg.
- ▶ A resolution passed by the Board of Directors or
- ▶ As per the MOA or AOA



Disqualification of Managing Director

- ▶ Sec 267 – no company can appoint or employ or continue the appointment or employment of any person as its MD or whole time director who :
- ▶ Is an undischarged insolvent or has any time been adjudged an insolvent.
- ▶ Suspends or has at any time suspended, payment to his creditors or makes or has at any time made a composition with them
- ▶ Is or has at any time been convicted for moral turpitude.



Role & Term of MD

- ▶ It is stipulated that a MD shall be the member secretary of the Board of directors & shall function concurrently as an ED or CEO of the co & shall have substantial powers of mgmt subject to the control & general direction of the Board.
- ▶ No company can appoint or employ an individual as its MD for a term exceeding 5 yrs at a time. However a person may be reappointed, re-employed or his term of the office extended further periods not exceeding 5 yrs on such occasion. Such re-appointment, re-employment or re-extension cannot be sanctioned earlier than 2 yrs from the date on which it is to come into force as per Sec 371. this regulation doesnot apply to the pvt co unless it is a subsidiary of a pub co.



Manager

- ▶ Manager as per Sec 2(24) means an individual who subject to the superintendence, control & direction of the Board of the director, has the management of the whole, or substantially the whole of the affairs of a company, and includes a director or any other person occupying the position of a manager, by whatever name called & whether under a contract of service or not.



Winding Up

- ▶ Winding up is the process of bringing to an end the legal personality of a company as a corporate body. During this process the company ceases to carry on its usual business, the assets are realised, the proceeds are utilised in paying off the debts, and the surplus, if any, is distributed amongst contribution pro rata.
- ▶ Generally winding up is associated with stinking & loss making companies.



Winding Up

- ▶ As per Sec 425 a company can be wound up in following 2 ways:
- ▶ 1. Compulsory Winding up or winding up by the order of NCLT. Or
- ▶ 2. Voluntary winding up or by the passing of a special resolution by the members themselves. This can be either members voluntary winding up or creditors winding up.



CSR

- ▶ Following companies shall do CSR :
- ▶ Net worth of rupees 500 cr or more or
- ▶ Turnover of rupees 100 cr or more or
- ▶ Net profit of rupees 500 cr or more
- ▶ Formation of committee of 3 Directors out of 1 has to be independent director
- ▶ Board to ensure that atleast 2% of avg net profit of last 3 years is spent by the company on CSR activities every financial year, else reasons for not spending to be specified in the Board's report signed by Director & Company Secretary .
- ▶ Monitor the CSR Policy from time to time
- ▶ If company fails to provide or spend such amount, the Board to specify reasons for not spending the amount in its report



One Person Company

- ▶ Separate legal entity
- ▶ Limited Liability
- ▶ Debt not the sole responsibility of the owner
- ▶ OPC to be suffixed with the name of OPC
- ▶ Registered as private company with one member and at least one Director
- ▶ Not required to hold AGM
- ▶ Min 1 Director and Max 15 can be done by passing Special Resolution
- ▶ Any resolution passed and entered into minutes book, signed and dated by the member shall be considered as Board Meeting



One person Company

- ▶ A person can incorporate max 5 OPC's
- ▶ Not required to create Cash Flow Statement as part of Financial Statement
- ▶ Must conduct 1 Board Meeting in each half of a calendar year with a gap of atleast 90 days between the 2 meetings
- ▶ Annual Return of OPC will be signed by Company Secretary, if no CS then by Director of the Company
- ▶ Only natural persons can incorporate OPC. Those person shd be an Indian citizen who has stayed in India atleast for 182 days during immediately preceding Financial year



Women Director Sec 149(1)

- ▶ Every listed company shall have 1 women Director within 1 yr of commencement
- ▶ Other Public co having :
- ▶ Paid up share capital of 100cr or more or turnover of 300 cr or more – shd hv women director within 3 yrs of commencement



Share Holders Grievance Committee (S 178)

Responsibility

Consider and resolve the grievance of security/share holders of the company

Eligibility

Companies having more than 1000 shareholders, Debenture holders, Deposit Holders etc.
Any time during the Financial Year

Chairperson

Non-exe Director and other members as decided by the Board.



