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# An Examination of the Obligations of Directors under the 2013 Companies Act in Contrast to the 1956 Companies Act

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## ABSTRACT

*The success of a company largely depends on the individuals who manage and direct it, making it essential to appoint directors who possess integrity and proper management knowledge. To ensure better corporate governance and security, the Companies Act of 2013 in India has made significant contributions by defining the obligations and duties of directors, especially those in public limited companies. The previous Companies Act of 1956 was inadequate in this regard, but the Companies Act of 2013 can be viewed as landmark legislation that clarifies, redefines, and expands the ambit of directors' obligations and duties.*

*The new provisions in the Companies Act of 2013 offer greater protection to directors concerning their conduct and duties, ensuring better corporate governance and management. These provisions empower and enable regulators, courts, and stakeholders to judge, regulate, and control directors' activities and obligations more fairly and effectively. The article offers valuable and insightful information on these new provisions of the Companies Act of 2013, specifically related to the roles, obligations, and duties of directors and independent directors of public limited companies.*

*The welfare of an organization depends on the shoulders of its directors, who are responsible for the interests of the company and its shareholders. Directors are essentially trustee agents and owe duties to the company; they are appointed by the shareholders to run the company's affairs for the benefit of the shareholders. Without good and proper directors, no company can achieve success, making the role of directors highly critical in any corporate governance system. The duties of directors are based on specific common law rules and equitable principles, and they owe these duties to the company and its stakeholders.*

*The obligations of directors are of no significance if they cannot be fully enforced. Enforcement is provided through different types of controls, including state enforcement, statutory enforcement, and derivative actions. Common law provides three methods of enforcement, and breaches of directors' duties offer various remedies. If a director breaches*

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*an obligation, there are available remedies for the company, shareholders, and other stakeholders under the Companies Act 2006. Other laws that deal with breaches committed by directors and the remedies available against them include the Company Directors Disqualification Act 1986 (CDDA) and the Insolvency Act 1986.*

**Keywords:** *Directors, Company Law, Duties of Directors.*

## **I. INTRODUCTION**

The importance of directors in the success of an organization, as they are responsible for the welfare and interests of the company and its shareholders. The author emphasizes that good and proper directors are crucial for the success of an organization, and that they play a significant role in corporate governance systems.

The different obligations and duties of directors under the Companies Act 2006 and the Indian Companies Act of 2013, and how they are enforced through different methods of implementation. The three methods of implementation are state enforcement, statutory enforcement, and subsidiary actions, which provide various remedies in case of breach of duties by the directors.

Furthermore, the paper mentions the Company Directors Disqualification Act 1986 (C.D.D.A) and the Insolvency Act 1986, which deal with breaches committed by directors and the remedies available to the company, shareholders, and other stakeholders.

## **II. DUTY**

The Companies Act, 2013 introduced the explicit statutory obligations of directors in Section 166, which outlines the general duties of directors. The key responsibilities of directors under the Act include:

1. Acting within powers: Directors are required to act in accordance with the articles of the company and within their powers.
2. Advancing the firm's goals: Directors are required to behave honestly and in good faith in order to advance the goals of the company for the benefit of all of its members.
3. Acting in the best interest of the company: Directors are obligated to act in the best interest of the company, its employees, shareholders, and community, and for the protection of the environment.
4. Exercising due care, skill, and diligence: Directors must exercise due and reasonable care, skill, and diligence and use independent judgment.

5. Avoiding undue gain or advantage: Directors should not use their position to gain undue advantage or benefit for themselves, their relatives, partners, or associates.
6. Not to delegate their office: Directors should not delegate their office to any other person.
7. Avoiding conflicts of interest: Directors should avoid direct or indirect conflicts of interest.

The director is part of the collective board responsible for the supervision, control, and management of the company's affairs. The obligations of directors are mainly derived from the law of office and trusts, where directors are the trustees of the company's money and property and act as agents in the transactions they undertake on behalf of the company.

Under the law of agency, directors have duties of skill, care, and diligence imposed on them. On the other hand, under the law of trusts, directors have fiduciary duties. Hence, if they misapplied funds or violated the company's bylaws, directors are accountable as trustees for breach of trust.

Directors are required to perform their duties as a reasonably diligent person having the knowledge, skill, and experience both of a person doing that director's function and of that person himself. A director may act as the company's agent, employee, officer, or trustee, among other things.

The provisions related to the duties and responsibilities of directors are contained in Chapters XI, XII, and XIII of the Companies Act, 2013, which cover the appointment and qualifications of directors, meetings of the board and its powers, and appointment and remuneration of managerial personnel.

While some provisions are similar to those in the previous Companies Act of 1956, the new Act also imposes additional obligations and duties on directors. Some of the significant provisions related to the duties and responsibilities of directors under the Companies Act, 2013, include Sections 161 to 163, 176, 180 to 183, 185, 192, 194, 195, and 202, which came into force on 12 September 2013.

In conclusion, the Companies Act, 2013 has set out the duties and responsibilities of directors explicitly in Section 166, which outlines the general duties of directors. Directors have a range of obligations to ensure that they act in the best interests of the company, its shareholders, employees, and the community. They must also avoid conflicts of interest and use due care, skill, and diligence when making decisions on behalf of the company. The Act also imposes

additional obligations and duties on directors compared to the previous Companies Act of 1956.

### **III. APPOINTMENT AND QUALIFICATIONS OF DIRECTORS**

The Board of Directors is responsible for overseeing the management and affairs of a company. It is considered the central governing body of the company and is entrusted with the responsibility of acting in the best interests of all stakeholders. The Board is responsible for setting the strategic direction of the company, ensuring compliance with legal and regulatory requirements, and overseeing the performance of management.

The Board of Directors is made up of individual directors, who are appointed to the Board in accordance with the provisions of the Companies Act, 2013. The Act defines a director as a person appointed to the Board of a company to perform the duties and functions of a director in accordance with the provisions of the Act.

The appointment of directors is governed by the Articles of Association of the company, which is a document that outlines the rules and regulations governing the internal affairs of the company. In general, in a public company or a private company subsidiary of a public company, two-thirds of the total number of directors are appointed by the shareholders, and the remaining one-third is appointed in the manner prescribed in the Articles. If the Articles are silent on the matter, the remaining one-third of the directors must be appointed by the shareholders.

In a private company that is not a subsidiary of a public company, the Articles may specify the manner of appointment of any or all of the directors. If the Articles are silent, the directors must be appointed by the shareholders.

### **IV. ARRANGEMENT OF MANAGING DIRECTORS**

A person chosen by the board of directors to oversee a company's daily operations is known as a managing director (MD). The Companies Act of 2013 mandates that an MD must be a human, not a business or a firm. An MD may be appointed for a maximum of five years, after which the appointment may be extended with the consent of the company's shareholders and board of directors. An individual can only become the MD or Manager of one other company (private or public), with the prior unanimous consent of the Board of Directors of that company, if they are already acting in that capacity for an open company or a private firm subsidiary of an open company. Managers or MDs of "pure" private enterprises, which are not branches of public companies, are not subject to this prohibition. If the appointment of the MD or Manager does not comply with Parts I and II of Schedule XIII of the Companies Act, it must first be approved by the Central Government in the event of an open company or a private business subsidiary of

an open company. The Companies Act's Schedule XIII lists some requirements and exclusions for the appointment of MDs, Managers, and full-time Directors. Age, education, experience, and lack of engagement in any judicial actions are just a few of the qualifications and exclusions listed. In accordance with the timetable, a public company's directors must retire by rotation at least one-third of the time at each annual general meeting (AGM).

## **V. CAPABILITIES FOR DIRECTORS**

The Companies Act, 2013, does not prescribe any specific qualifications for individuals to become directors of a company. This means that a company may set its own qualifications for directors in its Articles of Association, which is a document that outlines the rules and regulations for the internal management of a company.

However, the Act does limit the maximum share qualification that can be prescribed for directors of an Indian public company or a private company subsidiary of a public company. Share qualification refers to the minimum amount of shares that a director must hold in a company in order to be eligible to be appointed as a director. The limit for such share qualification is set at five thousand rupees (Rs. 5,000/-) by the Act.

Therefore, while the Companies Act allows companies to set their own qualifications for directors, it also ensures that there is a maximum limit to the share qualification that can be prescribed by an Indian public company or a private company subsidiary of a public company.

## **VI. INCORPORATION OF COMPANY**

In India, the most popular form of legal entity for a business is a Private Limited Company. To register a Private Limited Company, the Ministry of Corporate Affairs, Companies Act, 2013 and the Companies Incorporation Rules, 2014 are the governing bodies. The registration process requires a minimum of two shareholders and two directors. While a natural person can be both a director and shareholder, a corporate entity must be a shareholder. Additionally, foreign nationals, foreign corporate entities or NRIs are allowed to be directors and/or shareholders of a company with Foreign Direct Investment (FDI), making it a favourable option for foreign promoters.

Private Limited Companies offer several unique features, such as limited liability protection for shareholders, the ability to raise equity funds, separate legal entity status and perpetual existence. These characteristics make it the most recommended type of business entity for many small and medium-sized family-owned or professionally managed businesses.

Incorporation of a company offers many benefits to the business and its owners. One of the

most significant advantages is the protection of the owner's assets since the company is liable for its own debts. Other benefits include easy transfer of business ownership to another party through the sale of shares, tax planning for the owner through the use of a lower tax rate than personal income tax, and access to financing for business activities through the sale of stock.

Incorporation creates a protective bubble, often referred to as a corporate veil, around the company's shareholders and directors. This veil protects the shareholders, owners, and directors from personal financial liability outside of their original investments in the company. As a result, incorporated businesses are able to take the risks necessary for growth without running the danger of personally liable shareholders, owners, or directors.

## **VII. CONCLUSION**

In conclusion, the Companies Act of 2013 introduced several changes in the duties and responsibilities of directors, as compared to the previous Companies Act of 1956. The Act introduced more stringent provisions to ensure greater accountability and transparency in the functioning of companies. The Act imposes greater responsibility on the board of directors in areas such as corporate governance, risk management, and financial reporting. The board of directors is expected to act in the best interests of the company and its stakeholders, including shareholders, employees, customers, and the wider community. The Act also allows for the incorporation of different types of companies, such as private limited companies, public limited companies, and one person companies, each with its own set of advantages and disadvantages. Overall, the Companies Act of 2013 represents a significant step forward in ensuring good corporate governance and strengthening the legal framework for companies operating in India.

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