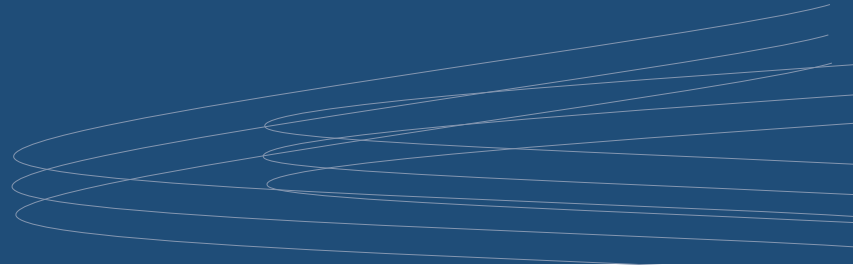




NANUBHAI DESAI & CO.

Compliance Requirements under the Companies Act, 2013



About Nanubhai Desai & Co.

Nanubhai Desai & Co., established in 1950 in Mumbai, has evolved into a well-recognized high quality personalized services firm. Our extensive knowledge and expertise across various service areas, including Audit and Assurance, Direct Taxes, Accounting, International Tax, and Consultancy services, enable us to offer a "One Stop Platform" by setting a benchmark of excellence in each domain.

With years of experience, we cater to a diverse clientele, including multinational companies (MNCs), foreign companies and their Indian subsidiaries, as well as public and private enterprises spanning industries such as hospitality, trading, fund & private wealth management, IT, and more. Our team comprises dedicated professionals with diverse skills and proficiency, capable of serving clients of all sizes across different sectors.

NDCo embodies a harmonious mix of seasoned expertise and youthful vigour, united by a shared vision of delivering exceptional services and unwavering support to our clients. It's a source of great professional pride that we have attained high level of trust and confidence of our clients.

CONTENTS

Introduction	1
Key Compliance Requirements	
Annual Compliance	2
Board Meetings & Resolutions	2
General Meetings	3
Financial Statements and Audit	3
Dividend Declaration and Payment	4
Audit Committee (Section 177)	4
Related Party Transactions (Section 188)	4
Corporate Governance	4
Maintenance of Statutory Registers and Records	5
Filing and Returns	5
Compliance Certificates	6
Winding up and Insolvency	6
Penalties for Non-Compliance	7
What support do we offer?	8

TERMINOLOGY GUIDE

AO	Assessing Officer
CBDT	Central Board of Direct Taxes
CIT(A)	Commissioner of Income Tax (Appeals)
CPC	Centralized Processing Centre
EWB	E-Way Bill
EVC	Electronic Verification Code
GST	Goods and Services Tax
HSN	Harmonized System of Nomenclature
ITA	Income Tax Authority
ITD	Income Tax Department
ITC	Input Tax Credit
ITAT	Income Tax Appellate Tribunal
PAN	Permanent Account Number
SAC	Service Accounting Code
TCS	Tax Collected at Source
TDS	Tax Deducted at Source
TIN	Taxpayer Identification Number
UIN	Unique Identification Number

1. INTRODUCTION

a. Overview of the Companies Act

The Companies Act, a fundamental legislation governing corporate entities in India, regulates various aspects from incorporation to dissolution. It promotes transparency and corporate governance, overseen by bodies like the Ministry of Corporate Affairs (MCA) and the National Company Law Tribunal (NCLT).

b. Significance of Compliance

Compliance with the Companies Act is vital for fulfilling legal obligations, ensuring transparency, and protecting stakeholders' interests. It mitigates legal risks, enhances investor confidence, and facilitates access to capital markets. Ultimately, compliance fosters trust, contributing to long-term success.



Companies Act

2. KEY COMPLIANCE REQUIREMENTS

a. Annual Compliance

i. Section 129: Financial Statements:

- Specifies the preparation of financial statements including balance sheet, profit and loss account, and other documents.
- Requires adherence to prescribed accounting standards and formats.
- Ensures accurate representation of the company's financial position, performance, and cash flows.

ii. Section 92: Annual Return:

- Requires every company to prepare an annual return containing specified information about its affairs, such as its registered office, shareholders, directors, and indebtedness.
- The annual return provides a snapshot of the company's status and activities throughout the year, promoting transparency and accountability to stakeholders.
- Must be filed with the Registrar of Companies within 60 days of the AGM.

iii. Section 137: Filing of Financial Statements and Other Documents with Registrar:

- Mandates companies to file their financial statements, including balance sheets, profit and loss accounts, along with other relevant documents, with the Registrar of Companies.
- Ensures that financial information is made available to regulatory authorities and stakeholders, facilitating transparency and accountability.
- Non-compliance with filing requirements can result in penalties and legal consequences, emphasizing the importance of timely submission.

b. Board Meetings and Resolutions

i. Section 173: Meetings of Board:

- Specifies the frequency and manner of conducting board meetings.
- Requires at least four meetings of the board of directors in a year with a maximum gap of 120 days between two consecutive meetings.
- Provides flexibility to hold additional meetings if necessary.

ii. Section 179: Powers of Board:

- Enumerates the powers of the board of directors, including the power to make decisions concerning the company's management and operations.
- Delegates certain powers to board committees while retaining responsibility.

c. General Meetings

i. Section 96: Annual General Meeting:

- Mandates that every company must hold an Annual General Meeting (AGM) within six months from the end of the financial year.
- AGM serves as a platform for shareholders to discuss company matters, approve financial statements, declare dividends, and appoint auditors.
- Failure to convene an AGM within the stipulated time can lead to penalties and legal repercussions.

ii. Section 101: Notice of General Meetings:

- Specifies the manner and period for giving notice of general meetings to shareholders.
- Requires sending notice of the meeting, along with the agenda and explanatory statement, to all members, directors, auditors, and other specified persons.
- Notice must be sent at least 21 days before the meeting (or shorter notice with the consent of the majority of members).

d. Financial Statements and Audit

i. Section 134: Financial Statements, Boards' Report, etc.:

- Mandates every company to prepare financial statements (including balance sheet, profit and loss account, cash flow statement, etc.) and boards' report.
- Specifies the contents of the boards' report, including details of the state of affairs of the company, financial performance, corporate governance, and other relevant disclosures.
- Requires the boards' report and financial statements to be approved by the board of directors and signed by specified officers of the company.

ii. Section 139: Appointment of Auditors:

- Governs the appointment, reappointment, and removal of auditors for companies.
- Prescribes the qualifications, disqualifications, and obligations of auditors.
- Requires companies to appoint auditors at their first AGM, who will hold office until the conclusion of the sixth AGM.

iii. Section 143: Powers and Duties of Auditors:

- Defines the powers and duties of auditors in conducting audits of the company's accounts and financial statements.
- Specifies the reporting requirements of auditors, including reporting on the accounts examined by them and reporting on internal financial controls.
- Empowers auditors to access books, records, vouchers, and other documents of the company and its subsidiaries.

e. Dividend Declaration and Payment

i. Section 123: Declaration of Dividend:

- Governs the declaration and distribution of dividends by companies.
- Specifies the conditions under which dividends can be declared, including the availability of profits, compliance with depreciation provisions, and any transferred amounts to reserves.
- Requires dividends to be declared only out of profits of the company for the financial year, or out of the accumulated profits earned by the company.

ii. Section 127: Punishment for Failure to Distribute Dividend:

- Specifies penalties for failure to distribute dividends within the prescribed time frame.
- Imposes fines on defaulting companies and officers in default for not complying with dividend distribution requirements.
- Ensures timely payment of dividends to shareholders in accordance with the provisions of the Companies Act, 2013.

f. Audit Committee (Section 177)

- Mandates the establishment of an audit committee by certain classes of companies.
- Specifies the composition and functions of the audit committee, including oversight of financial reporting, internal controls, compliance with laws and regulations, and related party transactions.
- Ensures independence and objectivity in the review and approval of related party transactions to safeguard the interests of shareholders and stakeholders.

g. Related Party Transactions (Section 188)

- Governs transactions between a company and its related parties, including directors, key managerial personnel, relatives, & firms in which they have substantial interest.
- Requires prior approval of the board of directors and shareholders for certain related party transactions exceeding prescribed thresholds.
- Ensures transparency, fairness, and accountability in related party transactions to prevent conflicts of interest and protect the interests of minority shareholders.

h. Corporate Governance

i. Section 149: Appointment of Directors:

- Specifies the criteria for the appointment of directors, including their qualifications, disqualifications, and independence.
- Requires the appointment of at least one-woman director on the board of certain classes of companies.
- Mandates the appointment of independent directors to enhance board effectiveness and protect the interests of minority shareholders.

ii. Section 152: Appointment of Additional Directors, Alternate Directors, and Nominee Directors:

- Allows the board of directors to appoint additional directors to fill casual vacancies or to meet specific requirements.
- Permits the appointment of alternate directors to act on behalf of a director during his/her absence.
- Facilitates the appointment of nominee directors by certain classes of shareholders or financial institutions to represent their interests on the board.

i. Maintenance of Statutory Registers and Records

i. Section 88: Register of Members:

- Requires companies to maintain a register of members, which includes details of shareholders, their addresses, the number of shares held, and any transfers of shares.
- Ensures transparency and accountability in share ownership and facilitates communication between the company and its shareholders.

ii. Section 170: Register of Directors and Key Managerial Personnel:

- Mandates the maintenance of a register containing particulars of directors and key managerial personnel, including their appointments, resignations, and other relevant details.
- Helps ensure compliance with regulatory requirements related to the appointment and cessation of directors and key managerial personnel.
- Facilitates transparency and accountability in corporate governance by documenting the composition of the board and key executives.

j. Compliance Certifications

i. Section 204: Secretarial Audit for Bigger Companies:

- Requires certain classes of companies, including listed companies and those with a paid-up share capital of a specified amount, to obtain a secretarial audit report from a practicing company secretary.
- The secretarial audit ensures compliance with applicable laws, regulations, and corporate governance norms.
- Helps in identifying and rectifying any non-compliance issues, enhancing corporate governance standards and transparency.

ii. Section 143: Audit Report:

- Mandates companies to have their financial statements audited by a qualified auditor.
- The auditor's report provides an independent assessment of the company's financial position, including its financial performance and compliance with accounting standards and regulatory requirements.

- Helps stakeholders, including shareholders, creditors, and regulatory authorities, make informed decisions based on reliable financial information.
- Non-compliance with audit requirements can lead to penalties and legal repercussions, underlining the significance of conducting audits in accordance with statutory provisions.

k. Winding Up and Insolvency

i. Section 270: Modes of Winding Up:

- Specifies various modes through which a company can be wound up, including voluntary winding up, winding up by the Tribunal, or winding up subject to the supervision of the Tribunal.
- Provides a legal framework for the orderly dissolution of a company's affairs, ensuring that interests of stakeholders are protected during the winding-up process.

ii. Section 271: Circumstances under which a company may be wound up by the Tribunal:

- Enumerates several grounds under which the Tribunal may order the winding up of a company, such as the company's inability to pay its debts, failure to commence business within one year of incorporation, or if the company resolves to wind up by special resolution.
- Offers a mechanism for creditors, shareholders, or other stakeholders to seek the winding up of a company in case of insolvency or other specified circumstances.
- Facilitates the resolution of financial distress and the equitable distribution of assets among creditors and shareholders in accordance with the priority of claims established by law

3. PENALTIES FOR NON-COMPLIANCE

a. Financial Penalties:

Non-compliance with provisions of the Companies Act may attract financial penalties, which could range from monetary fines to compounding of offenses. The quantum of penalties varies depending on the specific violation and may be levied on the company, its officers, or both.

b. Prosecution and Imprisonment:

Serious violations of the Companies Act may result in criminal prosecution of the company's officers, directors, or other responsible individuals. Conviction can lead to imprisonment, particularly for offenses involving fraud, misrepresentation, or wilful default.

c. Disqualification:

Breach of certain provisions may lead to disqualification of directors or other key personnel from holding office in any company for a specified period. This can have significant repercussions on the individual's career and reputation.

d. Loss of Legal Standing:

Failure to comply with statutory requirements may result in loss of legal standing for the company, affecting its ability to enter into contracts, raise capital, or engage in business activities. Non-compliant companies may also face restrictions on accessing certain government benefits or incentives.

e. Civil Liability:

Non-compliance may expose the company and its officers to civil liability, including lawsuits from shareholders, creditors, or regulatory authorities. Such litigation can result in financial damages, injunctions, or other court orders against the company or its management.

f. Reputational Damage:

Persistent non-compliance can tarnish the company's reputation and erode stakeholder trust. Negative publicity arising from regulatory scrutiny or legal proceedings may harm relationships with customers, investors, and business partners, leading to long-term damage to the company's brand and goodwill.

g. Regulatory Action:

Regulatory authorities empowered under the Companies Act have the authority to take remedial action against non-compliant companies, including inspection, investigation, or even deregistration. These actions can disrupt business operations, impose additional compliance burdens, and undermine investor confidence.

What support do we offer?

- We conduct thorough assessments of our clients' businesses to identify their specific compliance requirements under the Companies Act, 2013. This involves reviewing their corporate structure, operations, and activities to ensure alignment with statutory provisions.
- We offer expert advice and guidance on compliance matters, helping clients understand their legal obligations and responsibilities under the Companies Act. This includes interpretation of relevant provisions, compliance timelines, and regulatory updates.
- We assist clients in developing comprehensive compliance plans tailored to their unique business needs and regulatory requirements. This involves creating compliance calendars, setting up internal controls, and establishing protocols for monitoring and reporting.
- We help clients prepare and maintain all necessary documents, records, and registers required under the Companies Act, 2013. This includes drafting board resolutions, minutes of meetings, annual reports, financial statements, and other statutory filings.
- We facilitate the timely filing of various documents and returns with the Registrar of Companies (ROC) and other regulatory authorities as mandated by the Companies Act. This includes annual returns, financial statements, disclosures, and other statutory filings.
- We conduct regular compliance audits to assess our clients' adherence to statutory requirements and identify any areas of non-compliance or potential risk. This involves reviewing internal controls, processes, and procedures to ensure regulatory compliance.
- We assist clients in identifying and mitigating compliance risks associated with their business operations, ensuring proactive risk management strategies are in place to address regulatory changes and emerging issues.
- We represent clients in dealings with regulatory authorities, including responding to inquiries, resolving compliance issues, and representing them in regulatory proceedings or inspections.
- Facilitate communication and collaboration between the client and relevant stakeholders, such as regulators, investors, auditors, and legal advisors.

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