

# Update



## Notification yesterday, clarification today – but are things still clear?

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## Update

In what was being termed as a premature step by the Ministry of Corporate Affairs ("MCA") with the issue of notification dated September 12, 2013<sup>1</sup> enforcing 98 sections of the Companies Act, 2013 ("Act, 2013"), the MCA came up with a circular on September 13, 2013<sup>2</sup> to issue clarifications on these sections. We list below the clarifications issued:

Section No.	Provision	Clarification issued	Comments
2(68)	Definition of private company wherein the number of members could be restricted to 200.	Registrar may register companies as private company as per definition as in Companies Act, 1956 when MoA and AoA have been submitted by 11.09.2013	In effect when MoA and AoA have been submitted within 11.09.2013, such companies can still restrict the number of members to 50.
102	Expansive list of details to be annexed to the notice of general meeting	Companies which have issued notices of general meeting on or after 12.09.2013, the statement to be annexed shall contain additional information as required under this section.	Companies which have issued notices of general meeting before 12.09.2013 need not amend their notices. However, what about companies which have issued notices on or after 12.09.2013? Such companies need to again go through the Board process after incorporating the additional information in the notice. The MCA has also completely overlooked that compiling these additional information shall take time.

<sup>1</sup> <http://www.mca.gov.in/Ministry/pdf/CommencementNotificationOfCA2013.pdf>

<sup>2</sup> [http://www.mca.gov.in/Ministry/pdf/General\\_Circular\\_15\\_2013.pdf.pdf](http://www.mca.gov.in/Ministry/pdf/General_Circular_15_2013.pdf.pdf)



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Section No.	Provision	Clarification issued	Comments
133	Central Government to prescribe accounting standards in consultation and recommendation with National Financial Reporting Authority	Existing accounting standards to continue to apply till the standards of accounting are prescribed in consultation and recommendation with National Financial Reporting Authority	This was one of the premature sections which were enforced. By way of this notification, the MCA has put to rest the flutter which was caused.
180	This section lays down restrictions on the powers of the board and corresponds to section 293 of the Companies Act, 1956	If notice of general meeting was issued prior to 12.09.2013, then such resolution may be passed in accordance with Companies Act, 1956.	Comes as another relief for companies which have already issued notices prior to 12.09.2013. However, for companies which are yet to issue notices or have already approved notices of general meeting, the entire Board process will have to be followed again.

Although, the MCA has acted fast enough to issue clarifications, certain sections which may still pose problems, in the absence of such clarifications are:

1. Section 59- requiring rectification of register of members after approval of NCLT
2. Section 195 - prohibition of insider trading
3. Section 462 - exempting certain class of companies from the applicability of Act, 2013
4. Section 591 - application of Act, 2013 to foreign companies

Surely, another clarification should be in its way.

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