THE STANDARD STANCE

Adapting to the New Regulatory Shifts: Directors' Entry and Exit Norms

Volume 33
April 2026

BDO

EXECUTIVE SUMMARY

The Companies Act, 2013 ('2013 Act') redefined how companies are governed, managed, and held accountable. At its core, the 2013 Act advocates a governance-centric architecture, strengthening the roles and responsibilities of boards and directors. It formalises directors' duties, codifies fiduciary responsibilities, and elevates expectations around independence, oversight, and ethical conduct. The framework also brings a sharper focus on board composition, including the mandatory presence of independent directors ('IDs') and, in specified cases, women directors - signalling a deliberate move towards more balanced and diverse boardrooms.

2013 Act over the years....

Amended 4 times

The 2013 Act was amended to:

- Decriminalise certain offences
- Facilitate ease of doing business
- Rationalise compliance requirements
- Recognise new concepts

Recently, the Corporate Laws (Amendment) Bill, 2026 ("Bill") was introduced in the Lok Sabha to bring the 2013 Act and the Limited Liability Partnership Act, 2008 in line with globally recognised best practices and improve ease of living for corporates and stakeholders. The proposals emanate from the 2022 Report of the Company Law Committee and the recommendation of the High-Level Committee on Non-financial Regulatory Reforms. Presently, the Bill has been referred to the Joint Parliamentary Committee for detailed discussion. This edition of the Standard Stance deals with the key proposals regarding directors' appointments and disqualifications.

Summary of proposed amendments

90 sections to be amended

Broadly the proposals seek to:

- Further ease of doing business and living.
- Strengthen operational efficiency
- Recognise new concepts
- Removal of ambiguities

If implemented, these proposals might create inconsistencies with other laws and regulations; for example, SEBI Listing Regulations.

Independence criteria for IDs – pecuniary relationships

Stricter

Existing provisions	Rationale/ proposed amendments
▪ Section 149(6)(e)(ii)(B) of the 2013 Act provides that no person can be an ID if: – The person himself or any of his relatives are or have been an employee, partner or proprietor in any of the three financial years immediately preceding the financial year in which he is proposed to be appointed, of – Any legal or consulting firm that has or had transaction with the company /holding / subsidiary /associate company in the immediately preceding financial year, amounting to 10% or more of the gross turnover of such firm. ▪ Section 149(11) provides that an ID shall not be permitted to hold office beyond two consecutive terms and will be eligible for re-appointment only after the expiry of the requisite cooling-off period of three years.	▪ A combined reading seems to imply that: – An employee, proprietor or partner of a legal or consulting firm could be appointed as an ID in such company if the transaction amounted to less than 10% of the gross turnover of that firm. – Upon ceasing to hold office after two consecutive terms, the person would not be allowed to be associated with the company in any capacity. ▪ Proposed that the threshold of 10% be reduced to a lower % (to be prescribed) to increase transparency and reduce the pecuniary relationship. ▪ New proviso is proposed under section 149(11) such that where the transaction of such legal or consulting firm is less than the prescribed thresholds, ID may continue his association with such firm.

Independence criteria for IDs – continued compliance

Stricter

Existing provisions	Rationale/ proposed amendments
▪ Section 149(6) lays down the criteria for determining the independence of an ID, such as no material pecuniary relationship, no close ties with promoters or directors of the company, etc. at the time of appointment. *(Presently, there is no explicit requirement to assess ongoing compliance of independent norms.)* Further, under section 149(6)(e)(i) and (ii), a person can be appointed as ID in case of his association with the company, its holding, subsidiary, associate for not *"three financial years immediately preceding the financial year"* ▪ Provision to Section 149(11) provide that post completion of tenure an ID should not, during the cooling period of three years, be appointed/ associated with the company in any other capacity - directly or indirectly.	▪ IDs play a crucial role in promoting corporate governance since their presence serves as a deterrent to fraud and mismanagement in a company. ▪ Section 149(6) is proposed to be amended such that: – Every ID should ensure that they continue to fulfil the independence requirements during the *"term of his appointment"* as well. – The existing disqualifications of any of the *"three financial years"* immediately preceding the financial year be extended to cover *"the current financial year"* as well. ▪ Further, restriction during the three-year cooling period as applicable to the company under section 149(11) be extended to its holding, subsidiary or associate company.

Tenure of IDs

Clarificatory

Existing provisions	Rationale/ proposed amendments
▪ Section 149(10) provides that an ID may hold office for a term not exceeding five consecutive years, but shall be eligible for re-appointment if the company passes a special resolution and such appointment is disclosed in the Board's reports. ▪ Section 149(11) further provide that an ID shall not be permitted to hold office beyond two consecutive terms and will be eligible for re-appointment only after the expiry of the requisite cooling-off period of three years. ▪ MCA had also clarified that the appointment of an ID for a term of five years or less is to be treated as one term.	▪ It was noted that the existing tenure of five years commences from the date the Board initially appoints the ID as an additional director. ▪ Strictly enforcing a fixed tenure would allow IDs to fulfil their role more efficiently since more extended periods of association may cause them to become aligned and entrenched with promoters or other Board members, thereby hindering their ability to act objectively. ▪ Explanation is proposed to be inserted under section 149(10) to clarify that any period during which the ID functioned as an additional director before regularisation cannot be excluded while computing the total tenure of the ID.

Appointment of additional directors

Stricter

Existing provisions	Rationale/ proposed amendments
▪ Under Section 161(1), an additional director can hold office up to the date of the next annual general meeting or the last date by which the annual general meeting should have been held, whichever is earlier. *(This allows an additional director to serve for nearly 12 months without shareholder approval.)* ▪ Casual vacancy be filled at a meeting of the Board, which shall be subsequently approved by members in immediate next general meeting as prescribed under Section 161(4). ▪ No explicit statutory prohibition on re-appointing a director whose appointment was rejected or could not be considered by shareholders.	▪ Boards could effectively misuse the additional director route to reappoint certain persons. ▪ It is proposed that: – Under Section 161(1) an additional director may hold office up to the date of the next general meeting or "*up to a period of three months from the date of his appointment, whichever is earlier.*" These proposals would be extended to the filing of casual vacancy of a director under Section 161(4). – Section 161(5) be introduced such that a person whose appointment as a director could not be considered or approved in a general meeting should not be appointed by the Board as an additional director/ alternate director/ director against a casual vacancy without the prior approval of its members.

Criteria for directors' disqualification – at appointment

Stricter

Existing provisions	Rationale/ proposed amendments
▪ Section 164(1) of the 2013 Act does not: – Prohibit professionals such as auditors and, secretarial auditors from becoming a director of the company or group entities. No cooling period has also been prescribed before such an appointment. – Prescribe "fit and proper" criteria.	▪ It is proposed to amend Section 164(1) so that: – An auditor/ secretarial/ cost auditor/ registered valuer/ insolvency professional, – Of the company or holding, subsidiary or associate company under the 2013 Act or Insolvency and Bankruptcy Code, – During the immediately preceding three financial years or the current financial year would be disqualified from being appointed as a director. ▪ Further, it is proposed that Section 164(1) would be amended to provide that the criteria for what or who is a "fit and proper person" should be prescribed in the Rules.

Criteria for directors' disqualification – after appointment

Stricter

Existing provisions	Rationale/ proposed amendments
▪ As per section 164(2), if a company fails to file its financial statements or annual returns for 3 continuous financial years, director would be disqualified & could not be re-appointed in such defaulting company or appointed in any other company for five years.	▪ Companies should be more diligent in filing these documents within time. ▪ It is proposed that the trigger period would be reduced from three financial years to two financial years.

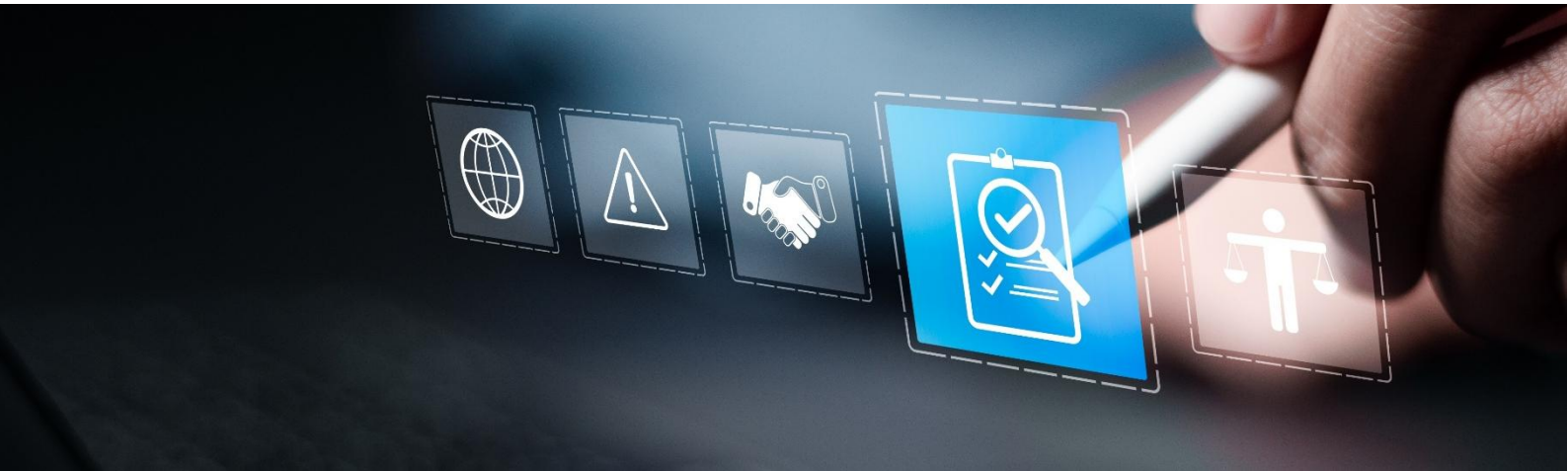
Vacation of office by a director

Stricter

Existing provisions	Rationale/ proposed amendments
▪ As prescribed in Section 167(1), upon incurring disqualifications under Section 164(2) (e.g., non-filing of returns), the director's office becomes vacant in all companies except for the defaulting company.	▪ Existing provisions have created an anomaly, i.e., the director continues in the very company that causes his disqualification. ▪ It is proposed that the directors' office would now become vacant in the defaulting company, after 6 months from the date of incurring disqualification or upon expiry of his tenure in such company, whichever is earlier. An explanation clarifies that the date of disqualification is the date on which the company fails to comply with Section 164(2).

IN CONCLUSION

The proposed tightening of independence norms, appointment norms, and reinforcing of disqualification triggers, attempts to raise the bar on who sits on the board and how they perform. The operative impact will hinge on the final contours of the amendments. Companies will need to watch how these proposals are ultimately included in the 2013 Act.



ABOUT BDO GLOBAL

BDO is an international network of independent public accounting, tax and advisory firms. We support organisations with an unwavering focus on quality, industry expertise, and the innovative use of technology to deliver impactful solutions. Our commitment to people, clients, and communities is at the core of everything we do. With our people-first culture, we foster an environment where diversity thrives, growth is nurtured, and continuous learning drives lasting progress for a sustainable future.

ABOUT BDO INDIA

BDO India offers Assurance, Tax, Advisory, Technology Products & Solutions, Digital Transformation, and Managed Services & Outsourcing to domestic and international clients across various industries. Bringing together expertise, innovatively driven and delivered through technology, we empower businesses to navigate their unique challenges with transformative, impactful, client-centric solutions. Helping people thrive is at our core, underpinning our commitment to building a sustainable future for our clients, people and communities. The team in India comprises over 11,000* professionals, led by more than 350 Partners and Directors, operating out of 20 offices across 14 key cities.

**Includes employees from BDO RISE and BDO EDGE*

CONTACT US

For any content related queries, you may please write to the service line experts at accountingadvisory@bdo.in
For any other queries or feedback, kindly write to us at marketing@bdo.in

BDO INDIA OFFICES

Ahmedabad
BDO India LLP
Westgate Business Bay, Block - A,
Level-6, Opp. Nirvana Party Plot,
S.G. Highway, Ahmedabad – 380051, INDIA

Bengaluru – Office 1
Prestige Nebula, Floor 3
Infantry Road
Bengaluru 560001, INDIA

Bengaluru – Office 2
SV Tower, No. 27, Floor 3 & 4
80 Feet Road, 6th Block, Koramangala
Bengaluru 560095, INDIA

Bhopal
Floor 3, Pradhan Business Center
Ansal Pradhan Enclave, E 8 Arera Colony
Near Dana Pani Square,
Bhopal 462026, INDIA

Chandigarh
Plot no. 55, Floor 5
Industrial & Business Park
Phase 1, Chandigarh 160002, INDIA

Chennai
Olympia Cyberspace, Floor 10, Module 4
No: 4/22 Arulayiammanpet, SIDCO Industrial
Estate Guindy, Chennai 600032, INDIA

Coimbatore
Pacom Square, Floor 3, 104/1, Sakthi
Main Road, Bharathi Nagar, Ganapathy
Coimbatore 641006, INDIA

Delhi NCR - Office 1
Magnum Global Park, Floor 21, Archview Drive,
Sector 58, Golf Course Extn Road
Gurugram 122011, INDIA

Delhi NCR - Office 2
Windsor IT Park, Plot No: A-1
Floor 2, Tower B, Sector 125
Noida 201301, INDIA

Goa
BIZ – Nest, Floor 7
A Wing, Sunteck Corporate Park
Opp. Shram Shakti Bhavan, Patto
Panaji, Goa 403001, INDIA

Hyderabad
1101/B, Manjeera Trinity Corporate
JNTU-Hitech City Road, Kukatpally
Hyderabad 500072, INDIA

Kochi
XL/215 A, Krishna Kripa
Layam Road, Ernakulam
Kochi 682011, INDIA

Kolkata
Floor 4, Duckback House
41, Shakespeare Sarani
Kolkata 700017, INDIA

Mumbai - Office 1
The Ruby, Level 9, North West &
South East Wings, Senapati Bapat Marg
Dadar (W), Mumbai 400028, INDIA

Mumbai - Office 2
601, Floor 6, Raheja Titanium, Western
Express Highway, Geetanjali Railway Colony,
Ram Nagar Goregaon (E), Mumbai 400063,
INDIA

Mumbai - Office 3
Floor 20, 2001 & 2002 - A Wing, 2001–
F Wing Lotus Corporate Park, Western Express
Highway, Ram Mandir Fatak Road, Goregaon
(E) Mumbai 400063, INDIA

Mumbai - Office 4
2nd floor, Empire Complex
414 , Senapati Bapat Marg
Lower Parel West,
Mumbai 400013, INDIA

Pune – Office 1
Floor 6, Building No. 1
Cerebrum IT Park, Kalyani Nagar
Pune 411014, INDIA

Pune – Office 2
Floor 2 & 4, Mantri Sterling, Deep Bunglow
Chowk, Model Colony, Shivaji Nagar
Pune 411016, INDIA

Vadodara
1008, Floor 10, "OCEAN", Sarabhai
Compound, Nr. Centre Square Mall, Dr.
Vikram Sarabhai Marg Vadodara 390023,
INDIA

Ahmedabad | Bengaluru | Bhopal | Chandigarh | Chennai | Coimbatore | Delhi NCR | Goa | Hyderabad | Kochi | Kolkata | Mumbai | Pune | Vadodara

Visit us at www.bdo.in