



**ROC's views on the queries raised by ICSI, Blr chapter members at the 3<sup>rd</sup> Interactive  
Session on 23<sup>rd</sup> September 2014**

1. A company has not filed DIN3 under the old Act. Now it wants to avail the CLSS scheme and file all the annual returns. However as DIN3 Form is not available, the company is not able to take advantage of the scheme. Pls advise if any recourse available.

**ROC's views :** The Companies (Appointment and Qualification of Directors) Rules is amended and Form DIR-3C (erstwhile form DIN 3) is introduced. The same can be filed for intimating DIN to the ROC. Before filing DIR 3C, the company has to approach ROC to map the DSC of one of the authorized signatory from backend.

With effect from 18.09.2014, new form DIR 3C has been introduced which enables the company to file details of directors of a company prior to MCA21 i.e. 30.6.2007.

In case of dormant company, the company has to initially file GNL 1 to make company active. After the company becomes active, the system will enable filing of DIR 3C. The form DIR 3C requires certification of practicing Company Secretary who should certify on verification of the records of the company and not the records at ROC.

2. Sometimes digital signature in incorporation certificate is not getting validated. We have received several complaint in this regard. Please let us know how to validate old certificates. If incorporation certificate is generated with signature validation is good.

**ROC's views :** This is a technical issue. A ticket/complaint can be raised for replacing the certificate with a new certificate, in the system. As an alternate, certified copy of the certificate can also be obtained.

3. Whether provisions of Section 185 of the Act will be applicable to the loan/guarantee/security disbursed/given subsequent to September 12, 2013 in accordance with the existing agreement (within the limits provided therein) entered prior to the coming into force of said section i.e., prior to September 12, 2013 to the persons specified in the said section? For instance if the Company has entered into Loan Agreement with a Director to given loan in instalments prior to Sep 12, 2013 and it has disbursed first instalment before Sep 12, 2013 and then wants to disburse 2nd instalment post Sep 12, 2013. Is it permissible?

**ROC's views :** The General Circular no.32/2014 dated 23.07.2014 issued by the Ministry, clarifies the issue which provides for transition period of resolutions, that the resolutions passed during 1.09.2013 to 31.03.2014, can be implemented as per the old Act subject to the condition that steps were already taken for implementation of the resolution,

upto expiry of one year from the passing of the resolution or six months from the commencement of the corresponding provision in New Act whichever is later.

In the given case, the resolution was passed before 31.03.2014 and steps were already taken to implement the same before 01.04.2014. Hence, the resolution will be valid for one year from the date of passing of resolution or six months from commencement of new Act whichever is later.

4. With regard to appointment of Managing Director for the Pvt Companies, where the Company has already appointed the MD do they have to pass a resolution under Section 196 of the Companies Act, 2013 by fixing their tenure for 5 years and terms.

**ROC's views** : Companies can make use of the clarification provided vide General circular no. 32/2014 dated 23-07-2014, if the resolution is passed between 01-09-2013 and 31-03-2014. If so, the resolution passed will be valid for one year from the date of passing or 6 months from the commencement of the CA, 2013, after the expiry of which a resolution u/s 196 should be passed.

5. Under Section 180, where it says that “the money borrowed together with the money already borrowed shall not exceed its paid capital and free reserves”, for the purpose of calculating the limits whether to consider the financial year ending figures or when the Company is going for approval at that time what is the present structure to consider.

**ROC's views** : Latest audited balance sheet figures are to be considered.

6. Under Section 139 with regard to appointment of Auditors, that the Company having Public borrowings from financial Institutions, banks or public deposits or rupees fifty crores or more have to appoint Auditors under Sub section 2. If in case the Company has taken an OD facility of Rs.70 crores and by time the Co. appoints the Auditors under this clause and immediately the Company repays the money and the borrowings falls below the threshold limits, does the Company still have to follow under Sub section 2 of Section 139 or withdraw an appoint and comply with Sub Section 1.

**ROC's views** : After appointment u/s 139(1), if sub-section (2) of section 139 gets triggered before the completion of the term, then the Company should comply with sub-section (2) of Section 139 relating to rotation of auditors.

139(1) is a general compliance and 139 (2) is a specific compliance.

7. There are several Companies who are appointing Auditors under sub Section 1 of Section 139 for five years, in between when the paid up Capital of Pvt Company increases to more than 20 crores, then do they have to withdraw the Compliance under Sub section 1 and comply with Sub section 2 of Section 139.

**ROC's views** : Comply with Section 139(2) prospectively.

8. For the purpose of filing DPT 4, whether new definition of the Deposit to be followed?

**ROC's views :** No, for the purpose of filing DPT 4, new definition of the Deposit should not be followed. In case there are deposits as of 31.03.2014 as per old Act, the form DPT 4 is to be filed with ROC for outstanding deposits, as per the interpretation of the term 'deposit' under old Act.

9. If yes, further confusion is that any amount received from any company is exempted and any amount received from a customer in the course of business and has not been appropriated against supply of goods/services within 365 days is a deposit. What if a company is such customer?? Similarly what if any government authority is a customer?? No clarification found on this.

**ROC's views :** Inter-corporate deposits and advance towards supply of goods/services are different. There should be an underlying contract for supply of goods/services. Transactions entered into on or after 01-04-2014 only can be treated as deposits, if not appropriated against supply of goods/services within 365 days.

10. For Director regularisation in the AGM whether deposit of 1 Lakh is to be complied under Section 160? and whether anything restricts deposit in cash?

**ROC's views :** Yes, to be complied with u/s160. There is no bar on deposit in cash; however treatment under Income Tax Act should be borne in mind.

11. MR-1 ( i.e., return of appointment of Key Managerial Personnel) is to be filed as per section 196,197, Schedule V and Rule 3 of (Appointment and Remuneration of Managerial Personnel ) Rules 2014.

Proviso to Section 196 (4) states that the return of appointment of MD etc., ( ie MR-1) is to be filed with ROC. There is no requirement of a KMP in case of Private limited companies. The Heading of the MR-1 form states about the appointment of KMP.

**ROC's views :** In case of appointment of MD by a private company, the company has to file MGT 14 and DIR 12. The form MR 1 need not be filed in this case as the company is not required to appoint KMP under the Act.

Kindly Clarify, is there is any need to file the said form MR-1 for a Managing Director/ whole time director who is not a KMP as per section 203 of the Companies Act 2013 ? Also clarify whether all the whole time directors and managing directors appointed by the company are KMP ?

Also clarify the Company secretary who was appointed under Rule 8A of Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014 is a KMP or not as the Private limited companies need not have KMP as per Rule 8 of the said Rules.

**ROC's views :** In case a company secretary is appointed by a company having a paid up capital of Rs. 5 Crores or more, he is treated as Key Managerial Personnel as well as officer who is in default.

12. As per earlier Act (CA 1956) the company can appoint whole time director/ managing director for life .

Kindly clarify since there is no transition period prescribed, will the whole time directors/managing directors appointed by the company will hold office for life? If not what steps to be taken by the company in case of existing WTD/MD?

**ROC's views :** Answered in query no.4

13. The circulars/ notifications issued by the Ministry before coming into force the Companies Act 2013 is still valid for the section which have been notified under the New Act ?

**ROC's views :** The circulars/notifications continue to be valid and binding on the departmental/officers (for clarification purpose), unless they cause miscarriage or are repugnant to any provision of the CA, 2013.

14. As per Rule No. 2(1)(c)(xi) of Companies (Acceptance of Deposit) Rules 2014 ; Any non interest bearing amount OR held in trust is not a deposit .

Kindly clarify whether the company take interest free loan from third parties?

**ROC's views :** Here the term OR should be read as AND. Any non interest bearing amount which is held in trust is not a deposit.

15. In case of conversion of partnership firm into an LLP, a minor who was partner in the firm, can he become an ordinary sleeping partner (Not Designated Partner) in the LLP?

**ROC's views :** No, the minor partner is not a full fledged partner and he is admitted only for the benefits of the firm. LLP is different from a partnership firm and hence the partner of LLP should necessarily be a major.

16. Is paper advertisement compulsory for conversion of Public Company into Private Company?

**ROC's views :** Insisted by ROC, Karnataka.

17. Company incorporated on or before 31/03/2014, wherein 1st main objects is to take over existing partnership firm, is it possible to takeover the partnership firm after 01/04/2014. What is the situation if the promoter wants to take over firm and incorporate the company now?

**ROC's views :** Chapter XXI, Section 366 deals with this. Though the Section allows for conversion of partnership firm to a Company, the rules framed there under permit only conversion of LLP to Company. Therefore, main objects should clearly state that it does not amount to conversion of partnership firm to company.

18. In terms of Section 11 of the Companies Act, 2013, every company shall file a declaration with ROC after incorporation before commencing any business or borrowing money. Can a company commence its operations after filing the declaration in INC-21 or should it wait for ROC approval ?

**ROC's views :** No need to wait for ROC's approval. Under the new Act, ROC does not issue certificate of commencement of business.

19. Under the Companies Act, 1956, provision for issue of Share Warrant by public limited companies was there under Section 114 & 115. However, there is no such provision under the Companies Act, 2013. Can both private & public companies issue share warrant now or is it completely prohibited ? If the issue is allowed, what is the procedure to be followed for the same?

**ROC's views :** Concept of share warrant no longer exists in CA, 2013.

20. As per Section 103 of the Companies Act, 2013, 2 members shall be physically present for the General Meeting of a private limited company to form a valid quorum. If the quorum is not present, meeting shall stand adjourned. In the adjourned meeting also, if the quorum is not present, members present shall be the quorum.

In the recently issued FAQs by ICSI, it is mentioned that, attendance of a member through video conferencing in an adjourned general meeting would be counted for quorum when there are only 2 members in a private limited company.

What is your view on this?

**ROC's views :** 2 members personally present only will form quorum. Participation through Video conferencing will not be treated as member personally present.

21. In terms of Section 96 of the Companies Act, 2013, general meetings can be called on any day except national holiday during business hours between 9 am to 6 pm. Can the meeting be called on Sunday also which is generally not a working day?

**ROC's views :** Yes, general meeting can be held on a day except on national holiday i.e. Aug 15, Jan 26 and Oct 2. General meetings can be called on any other day.

22. We need to file MGT-14 for "issue of securities, including debentures, whether in India or abroad" under Section 179 of the Act. Whether "Issue of securities" means "Offer of securities" or "allotment of securities".

If the “Issue of securities” means “allotment of securities”, is it required to file the resolution as we will file PAS-3 for allotment where we attach the board resolution.

**ROC's views :** “Issue of securities” is “offer of securities” and not “allotment of securities.” The form MGT 14 has to be filed at the time of offer of securities and form PAS 3 at the time of allotment of securities. The company need not file MGT 14 for allotment of securities

23. Section 101 of the Act provides for shorter notice of AGM. However, in terms of Section 136, copy of financials, auditors’ report, directors’ report etc. shall be sent to all the shareholders not less than 21 days before. Even in the FAQ of ICSI, it is clarified that financials and other documents cannot be sent at shorter notice. What is your interpretation?

**ROC's views :** Yes. Financials, auditor report, directors’ report etc., should be sent atleast 21 days in advance of the AGM.

**Disclaimer:** The views expressed by Mr. M R Bhat, ROC are his personal views and not the views of Ministry of Company Affairs.