

KNOWLEDGE GAINING SERIES

on

CORPORATE (COMPANY) GOVERNANCE – THE WAY FORWARD

Organised By

Vadodara Chapter of WIRC of ICSI

&

**Post Graduate Department of Business Studies,
Sardar Patel University**

On

27th March, 2022

at

Vallabh Vidyanagar

CS Devesh A. Pathak

Devesh Pathak & Associates

Practising Company Secretaries

Registered Insolvency Professional

maildeveshpathak@rediffmail.com



CORPORATE (COMPANY) GOVERNANCE – THE WAY FORWARD

WHY THIS PRESENTATION?

- I. Intention to provide **highlights of much needed major alerts** to Company Executives/Professionals
 - I. To **fine-tune management practices/ corporate actions** in line with the Act
 - II. To **ensure fair compliance** of the Act
 - III. To use this presentation as **a ready referencer**
- II. Discussion would be on **vital aspects and not thread bare discussion**
 - Keeping in view paucity of time
 - especially to **keep your interest intact**

CORPORATE (COMPANY) GOVERNANCE – THE WAY FORWARD

Major areas of Presentation

1. Directors/KMPs/Members/Committees
2. Board/ General Meetings/Committee Meetings
3. Related party Dealings
4. Borrowings including Deposits
5. Restriction on Sale/ Lease/ Otherwise disposal of undertaking(s).
6. Loans/ Investment/ Security/ Guarantee
7. Registration of charges
8. Share capital
9. Declaration of Dividend
10. CSR
11. statutory Registers
12. Audit
13. Financial statements
14. Annual Return

CORPORATE (COMPANY) GOVERNANCE – THE WAY FORWARD

PRIORITY CARE

I. ANNUAL FILING

- i. Please **hold** Annual General Meeting ('**AGM**') preferably after 30th June but before 30th September **every year**
- ii. Please **ensure to file** with Registrar of Companies (ROC)
 - **Financial Statement (AOC-4)** within 30 days of AGM
 - **Annual Return (MGT-7)** within 60 days of AGM
 - Filing of AOC-4/MGT-7 for the FY 2020-21 by 15-03-2022/31.03.2022.
- iii. **Late filing** of AOC-4/ MGT-7 would **cost Rs. 100 Per day**
- iv. **Non filing of AOC-4 or MGT-7** for consecutive **three years would cause disqualification of Directors**

II. DIR-3 KYC/DIR-3 KYC-WEB:

- i. Please file for **every director every year**
- ii. **Non Filing** of DIR-3 KYC/DIR-3 KYC WEB **may deactivate DIN of Director**

CORPORATE (COMPANY) GOVERNANCE – THE WAY FORWARD

PRIORITY CARE

III COMPANY KYC

- (i) File e-form ACTIVE (INC-22A) **once in lifetime for every company** with fees of Rs. 10000/-
- (ii) Non filing would show Active non-compliant in the Master data
- (iii) Non-filing prevents the Company from filing certain forms specified in Rule 25A of the Companies (Incorporation) Rules, 2014**

IV ADT-1 : File within 15 days from the date of Appointment of Auditor

CORPORATE (COMPANY) GOVERNANCE – THE WAY FORWARD

V Creation / Modification of Charge: (Sec. 77)

- Please obtain Charge Creation / Modification documents like deed of hypothecation / Equitable Mortgage from Banks/FI
- Please **file the form CHG-1 for Creation / Modification** of Charge within 30 days **to avoid hefty additional fees at ad valorem rate.**
- **After 120 days of creation / modification, it cannot be filed at all.**

CORPORATE (COMPANY) GOVERNANCE – THE WAY FORWARD

(1) Directors/ KMPs/ Members/ Committees

i. Digital Signature

- **Every Director to have Digital Sign.**
- Digital Signature necessary for application for DIN / for filing DIR-3 KYC/ for filing other documents with Registrar of Companies etc. (ROC)
- **Resigning Director may file DIR-11** with his own digital signature.

ii. Director Identification No. (DIN) (sec 152 & 154)

- Every person before his **appointment** as Director to have **DIN**
- **In case of a company to be incorporated, it can be through form no. INC-32 (SPICe)**
- **DIN to be mentioned** in the return, information or particulars to be furnished under the Act in respect of Director
- **Filing DIR-3 KYC/DIR-3 KYC-WEB every year** must for continuous activation of DIN
- **Multiple DIN(s) should be surrendered** by filing DIR-5 retaining old DIN.

CORPORATE (COMPANY) GOVERNANCE – THE WAY FORWARD

(1) Directors/ KMPs/ Members/ Committees

iii. Minimum & Maximum no. of Directors & Members

Type Of Company	Directors (Sec. 149)		Members	
	Minimum	Maximum	Minimum	Maximum
Public	3	15	7	No limit
Private	2	15	2	200 [Sec. 2 (68)]
OPC	1	15	1	1 [Sec. 2(62)]

(More than 15 directors can be appointed **by special resolution** without CG approval)

iv. **Maximum no. of Directorship (Sec. 165)**

- Not exceeding **20** Companies (including alternate directorship)
- Not exceeding **10 in public** companies

CORPORATE (COMPANY) GOVERNANCE – THE WAY FORWARD

Directors/ KMPs/ Members/ Committees

(V) Mandatory Appointment of some types of Directors

- a) **At least one Resident director** (stayed in India at least for 182 days during the financial year) [sec.149(3)]
- **No non-compliance** for the financial year **2020-21** (Circular no. 36/2020 dtd 20-10-2020)
- b) **At least one woman director** in [sec. 149(3)]
- **Every listed company**

 - **Every other public company having**
 - **Paid up share capital of Rs.100 crores or more**
OR
 - **Turnover of Rs.300 crores or more**

[Rule 3 of the Companies (Appointment and Qualification of Directors) Rules, 2014]

No requirement in private company

CORPORATE (COMPANY) GOVERNANCE – THE WAY FORWARD

(1) Directors/ KMPs/ Members/ Committees

(V) Mandatory Appointment of some types of Directors

(C) Independent directors (Sec. 149)

- **At least 1/3 of total directors in case of a listed company** in case of regular non executive non promoter chairman
- **At least ½ of total no. of directors in case of a listed company**
Where, there is **either Executive chairman** or **Promoter chairman** or **no regular non executive chairman**
[clause 17 of LODR]
- **At least 2 directors in case of other unlisted Public companies having**
 - Paid up share capital of Rs. 10 crores or more or
 - Turnover of Rs. 100 crores or more or
 - Outstanding loans / debentures/deposits exceeding Rs. 50 crores[Rule 4 of the Companies (Appointment and Qualification of Directors) Rules, 2014]
- **No requirement in private company generally**

CORPORATE (COMPANY) GOVERNANCE – THE WAY FORWARD

(1) Directors/ KMPs/ Members/ Committees

(vi) Appointment of Directors by the Board (sec. 161)

- **Additional Director** to hold office upto next AGM or due date of AGM whichever is earlier. **(Does not mean extra player like 12th man in Cricket team)**
- **Alternate Director** , during absence of original director for not less than 3 months **from India**
- **Nominee director**
- **Filling up casual vacancy** subject to approval by members in the next general meeting

CORPORATE (COMPANY) GOVERNANCE – THE WAY FORWARD

(1) Directors/ KMPs/ Members/ Committees

(vii) Appointment and resignation of Director

- **Appointment of person other than retiring director at General meeting (Sec. 160)**
 - Notice of 14 days with **deposit of Rs. 1 lakh.**
 - Deposit **refunded** if he gets **elected** or **gets at least 25% of the valid votes.**
 - **Deposit not necessary** in case of independent director/a director **recommended by NRC or the Board as applicable**
- **Resignation of Director** (Sec. 168)
 - Company to file DIR-12 within 30 days [Rule 15 of the Companies (Appointment and Qualification of Directors) Rules, 2014]
 - **Resigning director may file DIR-11 within 30 days** [Rule 16 of the Companies (Appointment and Qualification of Directors) Rules, 2014]

(viii) Intimation by Directors

- Relating to disqualification, if any, in **DIR-8** before his appointment/reappointment
- Consent in **DIR-2** on or before his appointment/reappointment
- Relating to disclosure of interest in **MBP-1**
 - at the **first Board Meeting** of his participation
 - at the **first Board Meeting** at **every financial year**
 - very next Board Meeting **after change**

CORPORATE (COMPANY) GOVERNANCE – THE WAY FORWARD

(1) Directors/ KMPs/ Members/ Committees

ix. Disqualification of Director (Sec. 164)

(A) Major Grounds

Director of a Company which

- **Has not filed financial statement or annual return for any continuous period of 3 years**

or

- Has failed to repay deposit/redeem debenture or interest thereon or failed to pay dividend and continues one year or more

(B) Consequences

- **The Company to immediately file DIR-9**
- **Ineligible to be reappointed as a director of that Co. or appointed in other Company for 5 years from the date of failure**
- However, if any person appointed as a director **in defaulting company, disqualification not to be for first six months.**

(C) Remedy

- (a) **Director may make application to the High Court praying for direction to ROC for reactivation of DIN.**

However diversity of views amongst different High Courts

OR

- (a) If reactivation of Din is not feasible shareholders can add **two directors from back end**

Thereafter complete the Pending Annual Filing

the Company should **file DIR-10 for removal of Disqualification.**

(D) DIN of some of the Disqualified directors reactivated in November, 2021

CORPORATE (COMPANY) GOVERNANCE – THE WAY FORWARD

(1) Directors/ KMPs/ Members/ Committees

x) Vacation of Directorship (Sec. 167)

Means Ceasing to be a Director

Major grounds

a) **Incurs disqualification u/s 164**

However, **cessation** as director **in all, other Companies except defaulting Company** if disqualification under Section 164(2)

b) **Absence in all board meetings held during last 12 months with or without leave of absence.**

c) **Contravention of provision of section 184 relating to related party transactions**

d) **Failure to disclose interest u/s 184**

CORPORATE (COMPANY) GOVERNANCE – THE WAY FORWARD

(1) Directors/ KMPs/ Members/ Committees

xi. Key managerial personnel (KMPs) (Sec.203)

a. Key managerial personnel means

- **MD/ CEO/ WTD/ Manager**
- Company Secretary (**CS**)
- Chief Financial Officer (**CFO**)

b. Following **public companies to have KMPs**

- Every **listed company**
- Every other **public company** having a paid up **share capital of Rs. 10 crores or more.** [Rule 8 of chapter XIII]

c. **Private company need not have KMP except**

- **CS if paid up capital is Rs. 10 crores or more**
[Rule 8A of chapter XIII]

d. **Appointment & remuneration** to MD/ WTD/ Manager in accordance with Sec. 196, 197 & Schedule V

e. **Private Company-ceiling of remuneration not to apply**

(2) Board / General Meetings

Mandatory secretarial standards issued by ICSI applicable w.e.f 1/10/2017 on

- Meetings of the Board of Directors (SS-1)
- General Meetings (SS-2)

Recommendatory SS

- Dividend (SS-3)
- Board's Report (SS-4)

[i] Board Meetings (Sec. 173)

- At least seven days notice
- First board meeting **within 30 days of incorporation**
- **No gap of more than 120 days** between 2 consecutive Board Meetings
- At least **4 Board Meetings** in every **calendar year**
- Quorum of 1/3 of total strength or 2 , whichever is higher (Sec. 174)
- **Interested director can not remain present** during the transaction of business (Sec. 184)
- **In case of Private Co., interested director may participate** after disclosure of interest
- Sitting fees **upto Rs. 1,00,000** (Sec. 197)
- Attendance through **video conferencing is permissible** [even for Accounts approval]
- **Minutes to be recorded within 30 days**
- Signed by the chairman of the same meeting or succeeding meeting.
- To be noted in the next meeting
- Need not be confirmed

CORPORATE (COMPANY) GOVERNANCE – THE WAY FORWARD

(2) Board / General Meetings

[ii] General Meetings

A. Annual General Meeting [AGM] (Sec. 96)

- At least one AGM **every Calendar year**
- Subsequent **AGM** within 6 months from the close of the year, i.e **by latest on 30th September**
- **No gap of more than 15 months** between two AGMs
- Power of ROC to grant extension upto 3 months for aforesaid 3 Criteria
- ROC, Gujarat (Letter dtd 23.09.2021) granted **omnibus extension** for the Financial **year ended 31-03-2021 up to 2 months**
- During **business hours, i.e 9 a.m to 6 p.m**
- **Not on national holiday**
- In the same city, town or village where regd. office situated
- **Anywhere in India, if consented by all members** in case of unlisted Company
- **MCA Permitted AGM through VC/OAVM** upto 30.06.2022
- However, Company having **lesser than 1000 members** may hold AGM through **VC/OAVM only if at least mail address of 50% of members available**

CORPORATE (COMPANY) GOVERNANCE – THE WAY FORWARD

(2) Board / General Meetings

[ii] General Meetings

B. Extraordinary General Meetings [EGM] (Sec. 100)

Calling EGM

- By Board at its **own discretion**
- **On requisition by members** having at least 1/10 of voting power

Place of EGM

- **Within India**
- **Outside India if Co. is wholly Owned Subsidiary of foreign Company**

C. NCLT convened General Meeting

- Generally in case of arrangement by way of amalgamation or otherwise
- In accordance with the direction of NCLT.

CORPORATE (COMPANY) GOVERNANCE – THE WAY FORWARD

(2) Board / General Meetings

[ii] General Meetings

- Notice of **clear 21 days** (practically 25 days) along with explanatory statement
- Lesser days of Notice in case of Private Company as per Articles of Association
- **shorter notice with the consent of members**

AGM

- members holding atleast 95% of voting power

EGM

- **majority in no.** of members and
- Members holding **at least 95% of voting power**
- **Quorum** (Sec. 103)
 - **5 members (upto 1000 members)**
 - **15 members (exceeding 1000 but upto 5000)**
 - **30 members (exceeding 5000 members)**
 - **2 members in case of Pvt. Co.**
- Decision of members by **postal ballot compulsory** (Sec. 110)
 - In case of listed company/company having more than 200 members
 - In case of specified business (can be taken up even at general meeting if e voting facility given)
- **Postal ballot not mandatorily applicable to Pvt. Ltd Co. since members only upto 200**
- **E voting compulsory in case of listed company/company having at least 1000 members**
- Minutes to be recorded and signed within 30 days
(Clause 7.4 of SS-1)

CORPORATE (COMPANY) GOVERNANCE – THE WAY FORWARD

(3) Related party dealings

(i) (A) **Prohibition on giving loan to / giving guarantee or providing security in connection with loan taken by (Sec. 185)**

- a) **Any director** of the Company or its holding Co./his partner/his relative
- b) **any firm** in which a director/his relative/is partner

(B) (a) **No prohibition, on fulfillment of Conditions** to any other person in whom director interested i.e. to

- Any private co. in which such director is a director/member (no prohibition to public co.)**
- Any body corporate (whether public or private) whose at least 25% of voting power held/controlled by one or more any such Directors together**
- Any Body corporate/its Board/MD/Manager **accustomed to act** in accordance with instructions of the Board/Directors of lending co./such director(s) together (Sec. 185)

(b) **if following Conditions Satisfied**

- **Approval by Special Resolution**
- **Loans utilised only for its principal business activities**

Devesh Pathak & Associates
PCS & IRP
maildeveshpathak@rediffmail.com

CORPORATE (COMPANY) GOVERNANCE – THE WAY FORWARD

(3) Related party dealings

(C) Exceptions to giving loans, advances etc

(a) **Loan to MD/WTD**

- As per **service conditions extended to all its employees** or
- As per the **scheme approved by members by way of special resolution**

[Sec. 185(3)(a) of the Act]

(b) **Loan/guarantee/security**

- In the **ordinary course of business**
- **Interest at the rate not lesser than the bank rate** [Sec. 185(3)(b) of the Act]

(c) **Loan/guarantee/security by a holding co. to its wholly owned subsidiary** utilised for, its principal business activities.

(d) **Guarantee/security by a holding co. to its subsidiary**

- In respect of loan made by Bank/FI
- Such loan utilized by a subsidiary for its principal business activities

[Sec. 185(3)(d) of the Act]

(D) Non applicability of Section 185 in case of a private company [sr. no. 14 of Notification no. GSR 464(E) dated 05.06.2015]

Section 185 not applicable to private company if

a. There is no body corporate shareholder

b. Borrowing from Banks/FIs/Body Corporate lesser than

- Twice of its Paid up capital

Or

- Rs. 50 Crores

whichever is lower

c. No subsisting default in the repayment of deposit

Devesh Pathak & Associates

PCS & IRP

maildeveshpathak@rediffmail.com

CORPORATE (COMPANY) GOVERNANCE – THE WAY FORWARD

3) Related party dealings

(ii) Related party transactions (RPT) [Sec. 188]

(A) contracts/arrangements with prior approval by Ordinary Resolution

[Rule 15 of the Companies (Meetings of board and its power) Rules, 2014]

- **Sale/Purchase/Supply of any goods/materials** directly or through appointment of agent of **10% or more of the turnover** of the company
- **Sale/disposal/buying of any property directly** or through appointment of agent of **10% or more of the net worth** of the company or
- **Leasing of property** of any kind of **10% or more of the turnover** of the company
- **Availing or rendering of any services** directly or through appointment of agent of **10% or more of the turnover** of the company
- **Appointment to office or place of profit** in the company/its subsidiary/associates co. **exceeding Rs. 2.5 lakhs per month**
- **Remuneration for underwriting** the subscription of any security/derivatives of the **company exceeding 1% of the net worth**

(B) Other contract/arrangements as specified in Sec. 188 with the approval of the Board

(C) Approval of Audit Committee for every RPT if the Company needs to have Audit Committee

CORPORATE (COMPANY) GOVERNANCE – THE WAY FORWARD

3) Related party dealings

(D) Exceptions to related party transactions

Transactions,

- **In the ordinary course of business**
- **On arm's length basis**

(E) General

- **Interested director can not be present** during the discussion of the business in the Board Meeting [Sec. 184(2)]
- **However, in case of Private Co. interested director can participate** after disclosure of interest [Sr No. 13 of Notification No. GSR 464(E) dtd. 05.06.2015]
- **Related party can not vote** on the Ordinary Resolution **u/s 188** in the General Meeting
- In public Co., **interested Chairman can neither propose the resolution nor chair** that business [Clause 5.3 of SS-2]
- **'Related party' restricted to related party to the contract/arrangement only and not all parties**
(General circular no. 30/2014 dated 17.7.2014)
- Related parties can vote on Ordinary Resolution **if 90% or more members, in numbers are relatives of promoters or related parties** [Section 188(1) third proviso]
- No shareholders approval required for Transactions between a **holding Company and its wholly owned subsidiary**, if holding Co's **accounts consolidated** [Section 188(1) fifth proviso]

CORPORATE (COMPANY) GOVERNANCE – THE WAY FORWARD

4) BORROWINGS INCLUDING DEPOSITS

(i) Borrowings

- a) Borrowing power can be exercised **at Board meeting** only [Sec179 (3)(d)]
- b) Circular resolution not permitted
- c) **MGT-14 along with Board resolution to be filed within 30 days to ROC** [Sec 117(3)(g) read with Rule 3 of the Companies (Meetings of Board and its Powers) Rules, 2014]
- d) **Borrowing Power can be delegated** to the committee of Directors /MD/ manager/ Principal officer.
- e) **Total Borrowing (excluding temporary loans from bankers) not to exceed aggregate of paid up capital, free reserves and securities premium** [sec. 180 (1)(c)]
- f) **Ceiling of borrowing exceeding above limit** can be decided by members **by special resolution** [sec. 180 (1)(c)]
- g) Borrowings include deposits
- h) MGT-14 along with Special Resolution to be filed within 30 days to ROC [Sec 117 (2)(a)]

CORPORATE (COMPANY) GOVERNANCE – THE WAY FORWARD

4) BORROWINGS INCLUDING DEPOSITS

(ii) RELAXATION TO PRIVATE COMPANY

- Ceiling of borrowing not applicable
[Clause no 12 of notification no GSR 464(E) dtd. 05.06.2015]
- MGT-14 along with Board Resolution need not be filed
[clause no.8 of notification no GSR 464 (E) dtd. 05.06.2015]

4. Borrowings including Deposits

iii) Non Deposit taking companies

a) Before 22-1-2019, not required to comply with-

- Section 73 to 76A of the Companies Act, 2013 ('the Act') relating to Deposits
- The Companies (Acceptance of Deposits) Rules, 2014 ('the Rules')

b) **w.e.f 22-1-2019, required to file DPT-3** (explanation to Rule 16 of the Rules)

CORPORATE (COMPANY) GOVERNANCE – THE WAY FORWARD

4. Borrowings including Deposit

iv) What is Deposit?

(Rule 2(1)(c) of the Companies(Acceptance of Deposits) Rules, 2014('the Rules')

- a) **Deposit includes any receipt of Money by way of deposit or loan or in any other form**
- b) **Except specific exclusions from the 'Deposit'**
- c) **No Compliances of the provisions of the Act/Rules in respect of Specific exclusions except filing DPT-3.**
- d) Any amount received **from a director** and in case of a private co. even from a relative of the director of a Company with a declaration of 'No Borrowed Fund' is **not a 'Deposit'**
- e) Receipt **from a shareholder** even in case of pvt.co is a **deposit.**

4. Borrowings including Deposits

V. Clarification in respect of receipts by private companies from their members, directors or their relatives before 01-04-2014

a Earlier, they were not 'deposit'

According to the Rules, 2014

- receipts from member is a 'deposit'
- receipts from member's relative is a 'deposit' since not excluded from definition

b. Clarified by MCA by General Circular No. 5/2015 dtd. 30/03/2015 that

- receipts by private companies from their members/directors or their relatives, before 01-04-2014 are not 'deposit'
- However, **disclosure to be made in the notes to** its financial statement.
- Any renewal or acceptance of fresh deposit on or after 01-04-2014 according to the rules are 'deposit'

4. Borrowings including deposits

vi Clarification on Auditor's Certificate on DPT-3

- a) Rule 16 requires to **file return in DPT-3 as at 31st March.**
 - **on or before 30th June of every year**
 - audited by the Auditor
- b) **MCA** vide its letter no. File no. P-01/08/2018-CL-V Vol VI dtd 26.06.2019 **clarified to ICAI**
 - **Auditors' Certificate mandatory only for Return of Deposits (ROD)**
 - Filing particulars of transactions not considered as deposits (in DPT-3) need not be from duly Audited Financial Statements
 - Only in case of ROD (DPT-3), information as per duly Audited Financial Statements
(Source: www.icai.org)
- c) Thus filing **DPT-3 along with Auditors' Certificate** by a Company **accepting / renewing deposit**
- d) **Filing DPT-3 without Auditor' Certificate** by a Company **not accepting /renewing deposit**
- e) To my view it is **desirable to have concurrence of Auditors** for filling DPT-3 in respect of Non-Deposits.

4. Borrowings including Deposits

vii. Between the lines (relating to Deposits)

Whether amount received from a person who is a director and a shareholder both is a ‘deposit’?

(a) Common feature in many companies

(b) Law is silent on this aspect

(c) **If treated as ‘deposits’ from shareholder**

- Promoter director would not be able to pump in funds beyond prescribed limit even if the Company would require more fund

- Would be subject to many more restrictions as deposit
vis a vis

- no restriction for borrowing from non shareholder director (generally outsider director) who really needs more protection

- Outsider Director may not be interested to grant loan

(d) **If treated as a receipt from a director**

promoter director can give loan to the company as and when required without any limit and without much legal hassel.

CORPORATE (COMPANY) GOVERNANCE – THE WAY FORWARD

4. Borrowings including Deposits

VI **DPT-3**

Companies required to file DPT-3

(a) Before 22.01.2019

- Only Deposit taking Companies
- Preamendment Rules 16 of the Rules

(b) After 22.01.2019

- Deposit taking Companies
- **Non-deposit taking companies**

(by virtue of following explanation to Rule 16)

- Explanation: It is hereby clarified that Form DPT-3 shall be used for filing return of Deposit or **particulars of transactions not considered as deposit** or both by every Company other than Government Company

CORPORATE (COMPANY) GOVERNANCE – THE WAY FORWARD

5) Restriction on Sale/Lease/Mortgage or otherwise Disposal of undertaking

[Sec. 180(1)(a)]

- i.(a) Lease/Mortgage or otherwise **disposal of whole/substantially whole undertaking**
 - (b) only with the approval of members by **special resolution**
 - (c) **Sale** of Whole /Substantially whole undertaking only through postal Ballot (even at the general meeting if e-voting compulsory)
 - (d) MGT-14 to be filed within **30 days of the resolution**
- ii. **Not applicable to private company** (clause no 12 of the notification no. 464(E) dtd 5.6.2015)

CORPORATE (COMPANY) GOVERNANCE – THE WAY FORWARD

6) Loans/Investments/Security/guarantee

i) Restrictions on investment/loan/security (Sec. 186)

Aggregate sum of

- **loan** to any **person**/body corporate
- providing **guarantee/security** in connection with a loan to any **person/body** corporate
- **investment** in the securities of any other Body Corporate (not beyond two layers)

NOT TO EXCEED

- **60% of paid up capital, free reserves and securities premium**
- **100% of free reserves and securities premium**

CORPORATE (COMPANY) GOVERNANCE – THE WAY FORWARD

6) Loans/Investments/Security/guarantee

Approvals in case of loan/Guarantee/Security/Investment beyond aforesaid limit

i **Prior approval of members by Special Resolution**

Exception

Loan to/guarantee/security for **wholly owned subsidiary/JV/acquisition** by holding Co. in its wholly owned subsidiary

ii. **In case of outstanding loan** with Public Financial Institution (PFI)

- unanimous approval of Board
- **prior approval of PFI**

iii. **No approval of PFI if within aforesaid limit**

CORPORATE (COMPANY) GOVERNANCE – THE WAY FORWARD

7) Registration of charges

The company to file

Creation/ Modification of Charge:-

- i) **Form no. CHG-1** (for other than debentures) **within 30 days from the date of creation/modification** of charge (**generally by hypothecation/equitable mortgage**) to ROC (Sec.77)
- ii) **Filing permitted upto 120 days** from the date of creation / modification with additional fees
- iii) **Additional fees**

Period of delay	Small Co. & OPC	Other than Small Co. & OPC
a) Upto 30 days	3 times	6 times
b) more than 30 days and upto 90 days	3 times + 0.025% of charge value	6 times + 0.05% of charge value
c) with maximum	Rs. 1 lakh	Rs. 5 lakhs

- iv) **After 120 days** from creation / modification, **it can not be filed at all**

Satisfaction of charge :

- i) **Form no. CHG-4 within 30 days** from the date of full payment/**satisfaction** of charge to ROC (Sec.82)
- ii) Filing permitted upto 300 days from the date of satisfaction by ROC with additional fees.
- iii) **Form no. CHG- 8 to CG (RD) for condonation of delay** if not filed within 300 days from the satisfaction (Sec 77/Sec. 87)

CORPORATE (COMPANY) GOVERNANCE – THE WAY FORWARD

8) Share Capital

i) Increase in authorised capital (Sec. 61)

- If authorised by Articles of Association
- May alter Authorised Capital clause of MOA at general meeting
- **Filing SH-7 along with Registration fees and stamp duty** as applicable with ROC

ii) Further issue of shares (Sec. 62)

a) By right offer

b) By private placement

8) Share Capital

a) Issue and allotment by right offer (Sec. 62)

- **Offer for shares to the existing equity share capital in the proportion of their shareholding**
- Notice at least before 3 days from the opening
- Offer to be open for not lesser than 15 days and not more than 30 days
- MCA will have power to prescribe lesser than 15 days once the amendment will be effective
- **In case of private co.** offer may be for lesser period **if consented by 90% of the members** [Notification no. GSR 464(E) dtd. 5.6.2018]
- **Right to renounce if not prohibited by AOA**
- After expiry of time , the **Board may dispose of in the manner not disadvantageous to the shareholders and the company**

8) Share Capital

b) By Private Placement

- **Offer/invitation to a selected group of persons in form PAS-4**
(other than public offer) [Sec. 42(2)]
- If authorised by a **Special Resolution** [Sec. 62(1)(c)]
- **Price on the basis of valuation report by registered valuer** [Sec. 62(1)(c)]
- Offer to not exceeding 50 persons at a time and not exceeding 200 persons in the financial year [Rule 14(2)(b) of chapter III]
- Payment by **cheque/DD/other banking channel from applicant's a/c**
(not by cash)
[Rule 14(5)of chapter III]
- **No offer letter in form PAS-4 , if offer is to one or more existing members**
[clause 5 of the companies (share capital and debentures) amendment rules,2015 dated 18/3/2015]
- No advertisement/media/marketing distribution channel

CORPORATE (COMPANY) GOVERNANCE – THE WAY FORWARD

8) Share Capital

iii] Allotment of shares

- **Can be allotted on receipt of at least 5% of the application money** [Sec. 39(2)]
- **Allotment within 60 days from the receipt of application money**
- **Allotment in demat in case of a public co. [Rule 9A of the Companies (Prospectus and Allotment of Securities) Rules, 2014]**
- **If not refunded would be considered as deposit**
- **If not allotted, refund within 15 days from the expiry of 60 days**
- Amount of shares to be allotted (including existing paid up capital) not to exceed authorised capital
- **Form PAS-3 to be filed within 15 days** from the date of allotment
- **Share certificates** should be **stamped** generally by affixing revenue stamp or by payment of consolidated stamp duty to the stamp office
- Share certificates to be **dispatched within 2 months** from the date of allotment
- **Declaration of significant beneficial ownership interest (to identify real individual owner)** (sec.90)

9) Declaration of Dividend (Sec. 123)

i) General

- Board may declare interim dividend
- Final dividend if any, at AGM
- **Separate banking account for dividend**
- **Total amount to be deposited within 5 days** from the date of declaration of dividend
- Now, no Dividend Distribution tax
- Payment of dividend within 30 days

CORPORATE (COMPANY) GOVERNANCE – THE WAY FORWARD

9) Declaration of Dividend

ii) Unpaid/Unclaimed dividend (Sec. 124)

- Unpaid/unclaimed dividend should be transferred to unpaid/unclaimed dividend a/c within 7 days from the expiry of 30 days
- Alternatively it can be renamed as Unpaid/Unclaimed Dividend A/c after this period
- Statement containing names, address and amount of unpaid dividend be placed on **company's website and on the website approved by Central Government**
- Aforesaid unpaid/unclaimed amount **for a period of seven years be transferred to Investor Education & Protection Fund (IEPF)**
- **Even shares related to unpaid/unclaimed dividend for seven years be transferred to IEPF**
- **Aforesaid amt. and shares** transferred to IEPF **may be claimed** after following requisite procedure (Sec. 125)

CORPORATE (COMPANY) GOVERNANCE – THE WAY FORWARD

10) Corporate Social Responsibility [CSR] (Sec. 135)

i) General

a. **Applicable to any company having**

- Net worth of Rs. 500 crores or more or
- Turnover of Rs. 1000 crores or more or
- Net profit of Rs. 5 crores or more

b. Compulsory spending of at least 2% of average net profit of last 3 years

c. Spending on activities as per schedule VII

d. Spending on its own or through trust/society/Sec.8 Co.

10) Corporate Social Responsibility [CSR] (Sec. 135)

ii) CSR committee

a. Constitution

- A committee of **3 directors with at least one independent director**
- A company **not required to appoint independent director may have the committee without independent director**
- **A Pvt. Ltd having only 2 directors may have CSR committee only of 2 directors** [Rule 5(ii) of the Companies (Corporate Social Responsibility policy) Rules]
- If amount to be spent **does not exceed Rs. 50 Lakhs, CSR Committee need not be constituted** [Section 135 (9)]
- It does not mean that the Company is free from CSR obligations
- In stead, the Board would discharge CSR functions.

b. Functions

- To formulate and recommend CSR policy
- To recommend amount of CSR spending
- To monitor CSR policy from time to time
- To formulate and recommend Annual Action Plan

10) Corporate Social Responsibility [CSR] (Sec. 135)

(iii) Mandatory CSR Spending [Sec. 135(5)]

- i. At least **2% of the average (before tax) net profit** of immediately **preceding 3 financial years**
- ii. At least **2%** of the average (before tax) net profit of immediately **preceding financial year since incorporation** if **not incorporated since 3 years**.
- iii. Net profit as per section 198 of the Act **excluding**
 - **Profit from overseas branch** whether separate company or not
 - **Dividend received from other Indian companies compliant** of Section 135 of the Act & Rules.
- iv. Preference to local area / surrounding area

CORPORATE (COMPANY) GOVERNANCE – THE WAY FORWARD

10) Corporate Social Responsibility [CSR] (Sec. 135)

(iv) Excess spending on CSR for the financial year 2020-21 & onwards [Third proviso to Section 135(5) of the Act) read with Rule 7 of the Rules]:

- i. Excess Spending** can be **set off against CSR obligation of coming 3 financial years**
- ii. However, surplus** generated out of CSR activities
 - a) Can not be added** back to the **business profit**
 - b) Can be either
 - Ploughed back in the same project
 - OR
 - Transferred to 'Unspent CSR Account'
- iii. Excess spending on CSR for earlier years cannot be carried forward** [Sr. no. 16 of FAQs vide General Circular No. 1/2016 dated 12.01.2016]

CORPORATE (COMPANY) GOVERNANCE – THE WAY FORWARD

10) Corporate Social Responsibility [CSR] (Sec. 135)

(v) Unspent CSR expenditure for the financial year 2020-21 and onwards

- i. If earmarked for any ongoing project [Sec.135(5) & (6) of the Act]
 - a) Board to identify the ongoing project
 - b) The project should have **already commenced**
 - c) The reasons for unspent CSR expenditure to be specified in the Board's Report
 - d) Unspent amount to be transferred
 - **to _____Ltd./Pvt. Ltd. Unspent Corporate Social Responsibility Account 20__**
 - **in the scheduled bank**
 - **within a period of 30 days from the end of financial year** (i.e. generally by 30th April)
 - **if not spent within 3 financial years, to be transferred to the fund within 30 days from the end of 3rd financial year**

CORPORATE (COMPANY) GOVERNANCE – THE WAY FORWARD

(v) Unspent CSR expenditure for the financial year 2021-21 and onwards

- ii. If not earmarked for ongoing project in any financial year
 - a) Specify the reason of Unspent CSR expenditure in the Board's Report
 - b) Transfer unspent amount to the fund within 6 months** from the expiry of financial year (i.e. generally by 30th September)
 - c) Transfer to be in the fund specified in (item no. viii) of the Schedule VII [Rule 10 of the Rules]

iii. Unspent amount for the earlier years

If the Board took a call earlier, it would be a commitment + current year's obligation.

[Sr. no. 17 of FAQs vide circular no. 1/2016 dated 12.01.2016]

CORPORATE (COMPANY) GOVERNANCE – THE WAY FORWARD

12) AUDIT

- i) Appointment of statutory Auditors (Sec. 139)
 - a. Appointment of **Auditors for 5 years**
 - b. Auditor **not to be appointed/reappointed**
 - **Exceeding one term of 5 years in case of individual**
 - **Exceeding one term of each of 5 years in case of firm**
 - c. Form ADT-1 to be filed within 15 days of the meeting
 - d. **Such rotation applies only to**
 - **Listed company (Sec. 139)**
 - **Unlisted public company with paid up capital of Rs. 10 crore or more**
 - **Private company with paid up capital of Rs. 50 crore or more**
 - All companies having **public borrowing** from Bank/FI/Public Deposit of **Rs. 50 crore or more** [Rule 5 of the Companies (Audit and Auditors) Rules, 2014]

CORPORATE (COMPANY) GOVERNANCE – THE WAY FORWARD

12) AUDIT

ii) Appointment of Secretarial Auditor (sec. 204)

A. Companies required to appoint Secretarial Auditor

- a) Every **listed company** [Sec. 204(1)]
- b) Every **public company** having
 - Paid up capital of Rs. 50 crores or more
 - Turnover of Rs 250 crores or more [Rule 9 of Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014]
- c) **Every Company having o/s loans / borrowing from Banks/PFI of Rs. 100 Crores or more**
- d) **Appointee to be practising Company Secretary**
- e) Secretarial Audit in form MR-3 to be attached to Board's Report

CORPORATE (COMPANY) GOVERNANCE – THE WAY FORWARD

13) Financial statements (Sec. 134)

I.] Financial statement (Sec. 134)

- a. Shall be **approved at the Board Meeting**
- b. Shall be signed by
 - **Chairperson** (if authorised by the Board) **or**
 - **Two Directors (MD & CEO Director** , if any) and
 - **CFO** and
 - **CS**
- c. Financial statement alongwith form AOC-4 **to be filed**
- d. Financial statement to be filed **in XBRL form in case of**
 - listed Company and, its subsidiary or
 - having paid up capital of Rs. 5 crores or more or
 - having turnover of Rs. 100 crores or more or
 - Required to follow Ind AS
- e. **AOC-4 XBRL to be filed** with ROC **within 30 days from the date of AGM**
- f. **Belated filing to cost additional fee Rs. 100 per day**

CORPORATE (COMPANY) GOVERNANCE – THE WAY FORWARD

13) Financial statements (Sec. 134)

II. Board's Report

1. General

(i) Governed by

- Section 134 of the Companies Act, 2013 ('the Act')
- Rule 8 of the Companies (Accounts) Rules, 2014("the Rules")

(ii) To be signed by

- a chairperson, if authorized by the Board
 - or
 - at least two Directors (MD to sign)
- [Sec. 134(6) of the Act]

(iii) Shall be attached to the Financial Statement [Sec. 134(3)]

(iv) Recommendatory secretarial standards-4 in respect of Board's Report

(v) **Web link of Annual Return on the website of the Company, if any**
[Sec. 134(3)(a) read with Section 92(3) of the Act]

CORPORATE (COMPANY) GOVERNANCE – THE WAY FORWARD

14) Annual Return

A. General

- iii. Governed by
 - Sec. 92 of the Companies Act, 2013('the Act')
 - Rule 11 and 12 of the Companies(Management and Administration) Rules, 2014 ('the Rules')
- ii. A copy of Annual return to be placed on website, if any of the Company with disclosure of web link in Board's Report
- iii. **Particulars as at the close of financial year** (instead of position as at the date of AGM under the Companies Act, 1956)
- iv. A/R as per MGT-7A in case of OPC & Small Co.
[Small Company: a company having paid up capital & Turnover not more than Rs. 2 Crores and Rs. 20 Crores respectively]
- v. A/R as per MGT-7 in case of rest of the Companies

CORPORATE (COMPANY) GOVERNANCE – THE WAY FORWARD

14) Annual Return

B) Signing of A/R by [Sec. 92(1)]

(i) Director and CS or

(ii) A Director and PCS (if no CS in the Co.) or

(iii) In case of OPC & Small Company

- A CS or

- A Director (if no CS)

C) Filing of MGT-7 / MGT-7A (A/R)

- i. To be filed within 60 days from the date of AGM (to be held latest by 30th Sep.)**
- ii. Belated filing to cost additional fee of Rs. 100/- per day**

Devesh Pathak & Associates

PCS & IRP

Email: maildeveshpathak@rediffmail.com

CORPORATE (COMPANY) GOVERNANCE – THE WAY FORWARD

14) Annual Return

C) Requirement of Certification of A/R [Sec. 92(2)]

(i) Companies required

- ❑ Every **Listed Company** [Sec. 92(2)]
 - ❑ a Company having .
 - a **paid up capital of Rs. 10 Crores** or more
- OR
- a **turnover of Rs. 50 Crores** or more
- [Rule 11(2) of the Rules]

(ii) Certification by **PCS**

(iii) Certification in Form No. MGT-8

(iv) **Comments on broad 18 aspects of the Act over** & above on A/R as per Form No. MGT-8

CORPORATE (COMPANY) GOVERNANCE – THE WAY FORWARD

❖ DISCLAIMER

- 1) **No claim that any thing & everything** under the Companies Act, 2013 included under this presentation
- 2) **Fair attempt to give major alerts in nutshell** and guidelines with focus on important aspects which can be used as guidelines for ready reference
- 3) My **personal views** and not of any firm/institutions
- 4) My personal **views may also change with ever changing requirement**
- 5) **Company Secretary can be of help in compliance management of Company law**

THANKS A LOT
WITH REQUEST TO APPRECIATE
THAT

COMPANY LAW
NOT RESTRICTED TO ANNUAL FILING

Devesh Pathak & Associates
PCS & IRP
Email: maildeveshpathak@rediffmail.com



TIME FOR

QUESTIONS

**Devesh Pathak & Associates
Practising Company Secretaries
Insolvency Resolution Professional
maildeveshpathak@rediffmail.com**