

COMPANIES ACT, 2013

**MEETINGS OF BOARD
AND
ITS POWERS**



**THE INSTITUTE OF
Company Secretaries of India**
IN PURSUIT OF PROFESSIONAL EXCELLENCE
Statutory body under an Act of Parliament

MEETINGS OF BOARD AND ITS POWRS

The way we run board meetings says much about how we run the company. Successful companies use board meetings to create and improve key business strategies.

The board of directors of a company is primarily an oversight board. It oversees the management of the company to ensure that the interest of non-controlling shareholders is protected. It also functions as advisory board. Independent directors bring diverse knowledge and expertise in the board room and the CEO uses the knowledge pool in addressing issues being faced by the company. The most important function of a monitoring board is to provide direction to the company.

Another very important function of a monitoring board is to set the 'tone at the top'. It is expected to create the right culture within the company.

Meetings of the Board : Section 173

Section 173 of the Act deals with Meetings of the Board and Section 174 deals with quorum.

1. The Act provides that the first Board meeting should be held within thirty days of the date of incorporation.
2. In addition to the first meeting to be held within thirty days of the date of incorporation, there shall be minimum of four Board meetings every year and not more one hundred and twenty days shall intervene between two consecutive Board meetings.
3. In case of One Person Company (**OPC**), small company and dormant company, at least one Board meeting should be conducted in each half of the calendar year and the gap between two meetings should not be less than Ninety days.

Notice of Board Meetings

1. The Act requires that not less than seven days' notice in writing

shall be given to every director at the registered address as available with the company. The notice can be given by hand delivery or by post or by electronic means.

2. In case the Board meeting is called at shorter notice, at least one independent director shall be present at the meeting. If he is not present, then decision of the meeting shall be circulated to all directors and it shall be final only after ratification of decision by at least one Independent Director.

Requirements and Procedures for Convening and Conducting Board's Meetings

Directors may participate in the meeting either in person or through video conferencing or other audio visual means.

Rule 3 of the Companies (Meetings of Board and its Powers) Rules, 2014 (hereinafter in this Chapter mentioned as Rule) provides for the requirements and procedures, in addition to the procedures required for Board meetings in person, for convening and conducting Board meetings through video conferencing or other audio visual means:

- (1) Every Company shall make necessary arrangements to avoid failure of video or audio visual connection.
- (2) The Chairperson of the meeting and the company secretary, if any, shall take due and reasonable care:
 - (a) to safeguard the integrity of the meeting by ensuring sufficient security and identification procedures;
 - (b) to ensure the availability of proper video conferencing or other audio visual equipment or facilities for providing transmission of the communications for effective participation of the directors and other authorised participants at the Board meeting;
 - (c) to record the proceedings and prepare the minutes of the meeting;
 - (d) to store for safekeeping and marking the tape recording(s) or other electronic recording mechanism as part of the records of the company at least before the time of completion of audit of that particular year;
 - (e) to ensure that no person other than the concerned director are attending or have access to the proceedings of the meeting through video conferencing mode or other audio visual means; and

- (f) to ensure that participants attending the meeting through audio visual means are able to hear and see the other participants clearly during the course of the meeting, but the differently abled persons, may make request to the Board to allow a person to accompany him.
- (3)
- (a) The notices of the meeting shall be sent to all the directors in accordance with the provisions of sub-section (3) of section 173 of the Act.
 - (b) The notice of the meeting shall inform the directors regarding the option available to them to participate through video conferencing mode or other audio visual means, and shall provide all the necessary information to enable the directors to participate through video conferencing mode or other audio visual means.
 - (c) A director intending to participate through video conferencing mode or audio visual means shall communicate his intention to the Chairman or the company secretary of the company.
 - (d) If the director intends to participate through video conferencing or other audio visual means, he shall give prior intimation to that effect sufficiently in advance so that company is able to make suitable arrangement in this behalf.
 - (e) The director, who desire, to participate may intimate his intention of participation through the electronic mode at the beginning of the calendar year and such declaration shall be valid for one calendar year.
 - (f) In the absence of any such intimation from the director, it shall be assumed that the director will attend the meeting in person.
- (4) At the commencement of the meeting, a roll call shall be taken by the Chairperson when every director participating through video conferencing or other audio visual means shall state, for the record, the following namely :
- (a) name;
 - (b) the location from where he is participating;
 - (c) that he can completely and clearly see, hear and communicate with the other participants;

- (d) that he has received the agenda and all the relevant material for the meeting; and
 - (e) that no one other than the concerned director is attending or having access to the proceedings of the meeting at the location mentioned in (b) above.
- (5) (a) After the roll call, the Chairperson or the Secretary shall inform the Board about the names of persons other than the directors who are present for the said meeting at the request or with the permission of the Chairman and confirm that the required quorum is complete.

Explanation : It is clarified that a director participating in a meeting through video conferencing or other audio visual means shall be counted for the purpose of quorum, unless he is to be excluded for any items of business under any provisions of the Act or the Rules.

- (b) The roll call shall also be made at the conclusion of the meeting and at the re-commencement of the meeting after every break to confirm the presence of a quorum throughout the meeting.
- (6) With respect to every meeting conducted through video conferencing or other audio visual means authorised under these rules, the scheduled venue of the meeting as set forth in the notice convening the meeting, which shall be in India, shall be deemed to be the place of the said meeting and all recordings of the proceedings at the meeting shall be deemed to be made at such place.
- (7) The statutory registers which are required to be placed in the Board meeting as per the provisions of the Act shall be placed at the scheduled venue of the meeting and where such registers are required to be signed by the directors, the same shall be deemed to have been signed by the directors participating through electronic mode if they have given their consent to this effect and it is so recorded in the minutes of the meeting.
- (8) (a) Every participant shall identify himself for the record before speaking on any item of business on the agenda.
- (b) If a statement of a director in the meeting through video conferencing or other audio visual means is interrupted or garbled, the Chairperson or company secretary shall request for a repeat or reiteration by the director.

- (9) If a motion is objected to and there is a need to put it to vote, the Chairperson shall call the roll and note the vote of each director who shall identify himself while casting his vote.
- (10) From the commencement of the meeting until the conclusion of such meeting, no person other than the Chairperson, directors, Secretary and any other person whose presence is required by the Board shall be allowed access to the place where any director is attending the meeting either physically or through video conferencing without the permission of the Board.
- (11) (a) At the end of discussion on each agenda item, the Chairperson of the meeting shall announce the summary of the decision taken on such item along with names of the directors, if any, dissented from the decision taken by majority.
(b) The minutes shall disclose the particulars of the directors who attended the meeting through video conferencing or other audio visual means.
- (12) (a) The draft minutes of the meeting shall be circulated among all the directors within fifteen days of the meeting either in writing or in electronic mode as may be decided by the Board.
(b) Every director who attended the meeting, whether personally or through video conferencing or other audio visual means, shall confirm or give his comments, about the accuracy of recording of the proceedings of that particular meeting in the draft minutes, within seven days or some reasonable time as decided by the Board, after receipt of the draft minutes failing which his approval shall be presumed.
(c) After completion of the meeting, the minutes shall be entered in the minute book as specified under section 118 of the Act and signed by the Chairperson.

Explanation - For the purposes of this rule, 'video conferencing or other audio visual means' means audio-visual electronic communication facility employed which enables all the persons participating in a meeting to communicate concurrently with each other without an intermediary and to participate effectively in the meeting.

Matters not to be dealt with in a Meeting through Video Conferencing or other Audio Visual Means

Rule 4 prescribe restriction on following matters which shall not be dealt with in any meeting held through video conferencing or other audio visual means:

- (i) the approval of the annual financial statements;
- (ii) the approval of the Board's report;
- (iii) the approval of the prospectus;
- (iv) the Audit Committee Meetings for consideration of accounts; and
- (v) the approval of the matter relating to amalgamation, merger, demerger, acquisition and takeover.

Penalty

Every officer of the company who is duty bound to give notice under this section if fails to do so shall be liable to a penalty of twenty five thousand rupees.

Compliance with Secretarial Standards relating to Board Meetings

For the first time in the history of Company Law in India, the Companies Act, 2013 has given statutory recognition to the Secretarial Standards issued by the Institute of Company Secretaries of India.

Section 118(10) of the Act reads as under:

Every company shall observe secretarial standards with respect to general and Board meetings specified by the Institute of Company Secretaries of India constituted under section 3 of the Company Secretaries Act, 1980, and approved as such by the Central Government.

In the context of this provision, observance of Secretarial Standards issued by the Institute of Company Secretaries of India (ICSI) assumes special relevance and companies will have to ensure that there is compliance with these standards on their part. The ICSI is in process to bring out the Secretarial Standards in line with Companies Act, 2013 and has already issued the exposure draft of Secretarial Standard related to Board and General Meeting.

Quorum for Board Meetings : Section 174

One third of total strength or two directors, whichever is higher, shall be the quorum for a meeting.

If due to resignations or removal of director(s), the number of directors of the company is reduced below the quorum as fixed by the Articles of Association of the company, then, the continuing Directors may act for the purpose of increasing the number of Directors to that required for the quorum or for summoning a general meeting of the Company. It shall not act for any other purpose.

For the purpose of determining the quorum, the participation by a director through Video Conferencing or other audio visual means shall also be counted.

If at any time the number of interested directors exceeds or is equal to two-thirds of the total strength of the Board of directors, the number of directors who are not interested and present at the meeting, being not less than two shall be the quorum during such time.

The meeting shall be adjourned due to want of quorum, unless the articles provide shall be held to the same day at the same time and place in the next week or if the day is National Holiday, the next working day at the same time and place.

It can thus be observed that the provisions of the Companies Act, 2013 relating to board meetings have been made more realistic and in line with the current expectations of the corporate sector.

Passing of Resolution by Circulation : Section 175

A company may pass the resolutions through circulation. The resolution in draft form together with the necessary papers may be circulated to the directors or members of committee at their address registered with the company in India or through electronic means which may include e-mail or fax.

The said resolution must be passed by majority of directors or members entitled to vote.

If more than one third of directors require that the resolution must be decided at the meeting, the chairperson shall put the resolution to be decided at the meeting.

The resolution passed through circulation be noted at a subsequent meeting and made part of the minutes of such meeting.

Defects in Appointment of Directors not to Invalidate Actions Taken: Section 176

All acts done by directors shall be valid notwithstanding that it is subsequently noticed that his appointment was invalid by reason of

any defect or disqualifications or had terminated by virtue of the provisions of Companies Act or the articles of the company.

But this section doesn't give validity to any act done by directors whose appointment has been notices to be invalid or to have terminated.

BOARD COMMITTEES

Background

Corporate boards usually consist of the following minimal standing committees: (1) audit, (2) compensation, (3) executive, and (4) governance and nominating. Sometimes, committee names might differ slightly (i.e., the compensation committee may be known as the compensation and benefits committee or the governance and nominating committee may be referred to as the nominating committee).

Businesses with unique governance issues may have additional committees to address specific concerns. The duties and responsibilities of each of these core committees are specified in the charters drafted and adopted for each standing committee.

In relation to structure we need to remember that conduct is also important. In practice, the value added by a board can largely depend upon the behaviours of directors and the quality of their decisions. The 'right' structure may not prevent board members from making the 'wrong' calls and adopting mistaken or in-appropriate policies.

Committees are usually formed as a means of improving board effectiveness and efficiency in areas where more focused, specialized and technical discussions are required. These committees prepare the groundwork for decision-making and report at the subsequent board meeting. Committees enable better management of full board's time and allow in-depth scrutiny and focused attention.

The structure of a board and the planning of the board's work are key elements to effective governance. Establishing committees is one way of managing the work of the board, thereby strengthening the board's governance role. Any board should regularly review its own structure and performance and whether it has the right committee structure and an appropriate scheme of delegation from the board.

Audit Committee

In the wake of various corporate scandals, both in India and elsewhere, audit committee members are subject to enhanced

responsibilities and liabilities. Regulators are conducting more investigations of the actions of directors and officers. Nevertheless, serving as an audit committee member can be a rewarding experience and provides an opportunity to make a difference for a public company, its shareholders, and the investing public.

At the core of the financial reporting process is the audit committee of the company's board of directors. Audit Committee is now the gatekeeper of financial information that shareholders and the investing public rely upon in order to make informed investment decisions.

Section 177: Audit Committee

The Act has enlarged the responsibilities of auditors to include monitoring of auditors' independence, evaluation of their performance, approval of modification of related-party transactions, scrutiny of loans and investments, valuation of assets and evaluation of internal controls and risk management. They have to establish a vigil mechanism and protection for any whistle-blower. The members must be able to understand financial statements and have a majority of Independent Directors. Large companies must mandatorily have professional internal auditors.

1. The requirement of constitution of Audit Committee has been limited to :
 - (a) Every listed Companies; or
 - (b) The following class of companies –
 - (i) all public companies with a paid up capital of ten crore rupees or more;
 - (ii) all public companies having turnover of one hundred crore rupees or more;
 - (iii) all public companies, having in aggregate, outstanding loans or borrowings or debentures or deposits exceeding fifty crore rupees or more.

Explanation - The paid up share capital or turnover or outstanding loans, or borrowings or debentures or deposits, as the case may be, as existing on the date of last audited Financial Statements shall be taken into account for the purposes of this rule.

2. The Committee shall comprise of minimum 3 directors with majority of the directors being Independent Directors. The

majority of members of audit committee including its chairperson shall be person with ability to read and understand the financial statement.

3. A transition period of one year from the date on which the new Act comes into effect has been provided to enable companies to reconstitute the Audit Committee.
4. The terms of reference of the Audit Committee have now been specified and inter alia includes, -
 - (i) the recommendation for appointment, remuneration and terms of appointment of auditors of the company;
 - (ii) review and monitor the auditor's independence and performance, and effectiveness of audit process;
 - (iii) examination of the financial statement and the auditors' report thereon;
 - (iv) approval or any subsequent modification of transactions of the company with related parties;
 - (v) scrutiny of inter-corporate loans and investments;
 - (vi) valuation of undertakings or assets of the company, wherever it is necessary;
 - (vii) evaluation of internal financial controls and risk management systems;
 - (viii) monitoring the end use of funds raised through public offers and related matters.
5. The Audit Committee may call for the comments of the auditors about internal control systems, the scope of audit, including the observations of the auditors and review of financial statement before their submission to the Board and may also discuss any related issues with the internal and statutory auditors and the management of the company.
6. The audit committee hold the authority to investigate into matters or referred by the Board and have the powers to obtain professional advice from external sources and have full access to records of the company.
7. In addition to the auditor, the KMP shall also have a right to be heard in the meetings of the Audit Committee when it considers the auditor's report, though they shall not have voting rights.
6. Every listed company and the companies belonging to the following class or classes shall establish a vigil mechanism for

their directors and employees to report genuine concerns or grievances (Rule 7):-

- (1) The companies which accept deposits from the public;
 - (2) The companies which have borrowed money from banks and public financial institutions in excess of fifty crore rupees.
7. The companies which are required to constitute an audit committee shall oversee the vigil mechanism through the committee and if any of the members of the committee have a conflicted of interest in a given case, they should recuse themselves and the others on the committee would deal with the matter on hand.
 8. In case of other companies, the Board of directors shall nominate a director to play the role of audit committee for the purpose of vigil mechanism to whom other directors and employees may report their concerns.
 9. This vigil mechanism shall provide for adequate safeguards against victimization of employees and directors who avail of the vigil mechanism and also provide for direct access to the chairperson of the Audit committee or the director nominated to play the role of audit committee, as the case may be, in exceptional cases.
 10. In case of repeated frivolous complaints being filed by a director or an employee, the audit committee or the director nominated to play the role of audit committee may take suitable action against the concerned director or employee including reprimand.
 11. The Vigil Mechanism shall operate for directors and employees to enable them to bring to report genuine concerns. Further the said mechanism shall provide safeguards against victimization and provide for direct access to the chairperson of the Audit Committee in appropriate or exceptional cases.
 12. The details of establishment of the Vigil Mechanism is required to be disclosed by the company on its website, if any and in the Board's report.

Audit Committee under Listing Agreement

In case of Listed Companies, their compliance shall be in accordance with the Corporate Governance provisions enshrined in Clause 49 of the Listing Agreement.

The provisions relating to Audit Committee as contained in the recently amended Clause 49 of the Listing Agreement which will take effect from October 1, 2014 reads as under:

A qualified and independent audit committee shall be set up, giving the terms of reference subject to the following:

- (i) The audit committee shall have minimum three directors as members. Two-thirds of the members of audit committee shall be independent directors;
- (ii) All members of audit committee shall be financially literate and at least one member shall have accounting or related financial management expertise;

Explanation 1: The term “financially literate” means the ability to read and understand basic financial statements i.e. balance sheet, profit and loss account, and statement of cash flows.

Explanation 2 : A member will be considered to have accounting or related financial management expertise if he or she possesses experience in finance or accounting, or requisite professional certification in accounting, or any other comparable experience or background which results in the individual’s financial sophistication, including being or having been a chief executive officer, chief financial officer or other senior officer with financial oversight responsibilities.

- (iii) The Chairman of the Audit Committee shall be an independent director;
- (iv) The Chairman of the Audit Committee shall be present at Annual General Meeting to answer shareholder queries;
- (v) The audit committee may invite such of the executives, as it considers appropriate (and particularly the head of the finance function) to be present at the meetings of the committee, but on occasions it may also meet without the presence of any executives of the company;

The finance director, head of internal audit and a representative of the statutory auditor may be present as invitees for the meetings of the audit committee;

- (vi) The Company Secretary shall act as the secretary to the committee.

Meeting of Audit Committee

The audit committee should meet at least four times in a year and not more than four months shall elapse between two meetings. The

quorum shall be either two members or one third of the members of the audit committee whichever is greater, but there should be a minimum of two independent members present.

Powers of Audit Committee

The audit committee shall have powers, which should include the following:

1. To investigate any activity within its terms of reference.
2. To seek information from any employee.
3. To obtain outside legal or other professional advice.
4. To secure attendance of outsiders with relevant expertise, if it considers necessary

Role of Audit Committee

The role of the audit committee shall include the following:

1. Oversight of the company's financial reporting process and the disclosure of its financial information to ensure that the financial statement is correct, sufficient and credible.
2. Recommending to the Board, the appointment, re-appointment and, if required, the replacement or removal of the statutory auditor and the fixation of audit fees.
3. Approval of payment to statutory auditors for any other services rendered by the statutory auditors.
4. Reviewing, with the management, the annual financial statements before submission to the board for approval, with particular reference to:
 - a. Matters to be included in the Director's Responsibility Statement to be included in the Board's report;
 - b. Changes, if any, in accounting policies and practices and reasons for the same;
 - c. Major accounting entries involving estimates based on the exercise of judgment by management;
 - d. Significant adjustments made in the financial statements arising out of audit findings;
 - e. Compliance with listing and other legal requirements relating to financial statements;

- f. Disclosure of any related party transactions;
 - g. Qualifications in the draft audit report.
5. Reviewing, with the management, the quarterly financial statements before submission to the board for approval.
 6. Reviewing, with the management, the statement of uses / application of funds raised through an issue (public issue, rights issue, preferential issue, etc.), the statement of funds utilized for purposes other than those stated in the offer document / prospectus / notice and the report submitted by the monitoring agency monitoring the utilisation of proceeds of a public or rights issue, and making appropriate recommendations to the Board to take up steps in this matter.
 7. Review and monitor the auditor's independence and performance, and effectiveness of audit process.
 8. Approval or any subsequent modification of transactions of the company with related parties.
 9. Scrutiny of inter-corporate loans and investments.
 10. Valuation of undertakings or assets of the company, wherever it is necessary.
 11. Evaluation of internal financial controls and risk management systems.
 12. Reviewing, with the management, performance of statutory and internal auditors, adequacy of the internal control systems.
 13. Reviewing the adequacy of internal audit function, if any, including the structure of the internal audit department, staffing and seniority of the official heading the department, reporting structure coverage and frequency of internal audit.
 14. Discussion with internal auditors of any significant findings and follow up there on.
 15. Reviewing the findings of any internal investigations by the internal auditors into matters where there is suspected fraud or irregularity or a failure of internal control systems of a material nature and reporting the matter to the board.
 16. Discussion with statutory auditors before the audit commences, about the nature and scope of audit as well as post-audit discussion to ascertain any area of concern.

17. To look into the reasons for substantial defaults in the payment to the depositors, debenture holders, shareholders (in case of non-payment of declared dividends) and creditors.
18. To review the functioning of the Whistle Blower mechanism
19. Approval of appointment of CFO (i.e., the whole-time Finance Director or any other person heading the finance function or discharging that function) after assessing the qualifications, experience and background, etc. of the candidate.
20. Carrying out any other function as is mentioned in the terms of reference of the Audit Committee.

Explanation (i): The term “related party transactions” shall have the same meaning as provided in Clause 49(VII) of the Listing Agreement.

Review of information by Audit Committee

The Audit Committee shall mandatorily review the following information:

1. Management discussion and analysis of financial condition and results of operations;
2. Statement of significant related party transactions (as defined by the audit committee), submitted by management;
3. Management letters/letters of internal control weaknesses issued by the statutory auditors;
4. Internal audit reports relating to internal control weaknesses; and
5. The appointment, removal and terms of remuneration of the Chief internal auditor shall be subject to review by the Audit Committee.

Thus, it can be observed that the role of Audit Committee in listed companies will be governed both by the provisions of the Listing Agreement and the revised Section 177 of the Companies Act, 2013.

SECTION 178 : Nomination and Remuneration Committee and Stakeholders Relationship Committee

The Nomination and Remuneration Committee helps the Board of Directors in the preparations relating to the election of members of the Board of Directors, and in handling matters within its scope of responsibility that relate to the conditions of employment and

remuneration of senior management, and to management's and personnel's remuneration and incentive schemes. The responsibilities of the Remuneration and Nomination Committee are defined in its policy document.

Except for certain large listed companies, the importance of constitution of the Nomination and Remuneration Committee has not been realised fully in India.

The Board of directors of following companies shall constitute Nomination and Remuneration Committee of the Board :

- (a) Every listed Companies; or
- (b) The following class of companies –
 - (i) all public companies with a paid up capital of ten crore rupees or more;
 - (ii) all public companies having turnover of one hundred crore rupees or more;
 - (iii) all public companies, having in aggregate, outstanding loans or borrowings or debentures or deposits exceeding fifty crore rupees or more.

The committee shall consist of three or more non-executive directors out of which not less than one-half shall be independent directors.

The chairperson of the company may be appointed as member, but shall not chair such committee.

The Committee shall identify the person qualified to become directors and may be appointed in senior management and recommend their appointment and removal and also carry out evaluation of every director.

The Committee shall formulate the criteria, for determining qualifications, positive attributes and independence of a director and recommend to the Board the policy relating to remuneration for directors, KMPs and other employees.

While formulating its policy, the Nomination and Remuneration Committee shall ensure that (a) the level and composition of remuneration is reasonable and sufficient to attract, retain and motivate the directors (b) relationship of remuneration to performance is clear and meets appropriate performance benchmarks and (c) remuneration to Directors, KMP and senior management involves a balance between fixed and incentive pay reflecting short and long term

performance objectives which are suited to the working of the company and its objectives.

The Nomination and Remuneration Committee shall, while formulating the policy under sub-section (3) ensure that—

- (a) the level and composition of remuneration is reasonable and sufficient to attract, retain and motivate directors of the quality required to run the company successfully;
- (b) relationship of remuneration to performance is clear and meets appropriate performance benchmarks; and
- (c) remuneration to directors, key managerial personnel and senior management involves a balance between fixed and incentive pay reflecting short and long-term performance objectives appropriate to the working of the company and its goals:

Provided that such policy shall be disclosed in the Board's report.

Be in a position to bring about objectivity in determining the remuneration package while striking a balance between the interest of the company and the shareholders.

Duties of the Nomination and Remuneration Committee

The duties of the Nomination and Remuneration Committee have now been specified. They include

- (a) identifying persons who are qualified to become Directors and who may be appointed in senior management in accordance with the criteria laid down;
- (b) recommend to the Board their appointment and removal;
- (c) carry out evaluation of every Director's performance;
- (d) formulate the criteria for determining qualifications, positive attributes and independence of a Director and
- (e) recommend to the Board a policy, relating to the remuneration for the Directors, KMP and other employees.

Nomination and Remuneration Committee under the Listing Agreement

In terms of the recently amended Clause 49 of the Listing Agreement which will take effect from October 1, 2014, companies are required to constitute Nomination and Remuneration Committee.

The provisions with regard Nomination and Remuneration Committee is as under:

- A. The company shall set up a nomination and remuneration committee which shall comprise at least three directors, all of whom shall be non-executive directors and at least half shall be independent. Chairman of the committee shall be an independent director.
- B. The role of the committee shall, inter-alia, include the following:
 - 1. Formulation of the criteria for determining qualifications, positive attributes and independence of a director and recommend to the Board a policy, relating to the remuneration of the directors, key managerial personnel and other employees;
 - 2. Formulation of criteria for evaluation of Independent Directors and the Board;
 - 3. Devising a policy on Board diversity;
 - 4. Identifying persons who are qualified to become directors and who may be appointed in senior management in accordance with the criteria laid down, and recommend to the Board their appointment and removal. The company shall disclose the remuneration policy and the evaluation criteria in its Annual Report.
- C. The Chairman of the nomination and remuneration committee could be present at the Annual General Meeting, to answer the shareholders' queries. However, it would be up to the Chairman to decide who should answer the queries.

The Stakeholders Relationship Committee

Section 178(5) of the Companies Act, 2013 provides for constitution of the Stakeholders Relationship Committee.

The Board of a company that has more than one thousand shareholders, debenture-holders, deposit-holders and any other security holders at any time during a financial year is required to constitute a Stakeholders Relationship Committee consisting of a chairperson who shall be a non-executive director and such other members as may be decided by the Board.

The Stakeholders Relationship Committee shall consider and resolve the grievances of security holders of the company.

Who can attend the general meeting of the company on behalf of committee constituted under this section?

The chairperson of each of the committees constituted under this section or, in his absence, any other member of the committee authorised by him in this behalf shall attend the general meetings of the company.

Penalty for Contravention

The company shall be punishable with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees. Every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to one year or with fine not less than rupees twenty five thousand but which may extend to one lakh rupees or with both.

The non-consideration of resolution of any grievance by the Stakeholders Relationship Committee in good faith shall not constitute a contravention of this section.

Schedule IV under Section 149(7) of the Act contains the Code for Independent Directors. Under Sl. No. II (5) of the Code, Independent Directors are mandated to safeguard the interest of all stakeholders, especially the Minority Shareholders and balance the conflicting interests of the stakeholders.

It may be noted that listed companies are presently governed by the provisions of the Listing agreement executed with the various stock exchange(s). The provisions of Section 49 of the Listing Agreement mandate a mechanism for redressal of shareholder grievances.

Section 49 (IV) (G) (iii) of the Listing Agreement provides as under:

A board committee under the chairmanship of a non-executive director shall be formed to specifically look into the redressal of shareholder and investors complaints like transfer of shares, non-receipt of balance sheet, non-receipt of declared dividends etc. This Committee shall be designated as 'Shareholders/Investors Grievance Committee'.

Further, Listed Companies are also required to include the following information in the report on Corporate Governance forming part of their Annual Report:

- (i) Name of non-executive director heading the committee;
- (ii) Name and designation of compliance officer;
- (iii) Number of shareholders' complaints received so far;

- (iv) Number not solved to the satisfaction of shareholders;
- (v) Number of pending complaints.

With regard to investor redressal relating to Listed Companies, SEBI has also launched SCORES (SEBI Complaints Redress System) enabling investors to lodge and follow up their complaints and track the status of redressal of such complaints online from the above website from anywhere. This also enables the market intermediaries and listed companies to receive the complaints online from investors, redress such complaints and report redressal online. All the activities starting from lodging of a complaint till its closure by SEBI would be online in an automated environment and the complainant can view the status of his complaint online. An investor, who is not familiar with SCORES or does not have access to SCORES, can lodge complaints in physical form at any of the offices of SEBI. Such complaints would be scanned and also uploaded in SCORES for processing.

The requirement for a Stakeholders Relationship Committee is an interesting one. Relationships with stakeholders can be critical, and balancing the contending interests of different stakeholder groups and building mutually beneficial relationships with stakeholders are hallmarks of the effective board.

Again minimum compliance would be to establish a committee and hope it does not get in the way or prove a distraction. More benefit might be derived from using such a provision as a catalyst to identify and/or reassess the nature, interests and priorities of different stakeholder groups, the current state of relationships with them and how these might be improved.

Direction should be seen as a separate but complementary activity to management, rather than as a route to elevated status and higher earnings. Directors need to look beyond functional considerations and work for the best interests of the company and its stakeholders. Their perspective should be strategic rather than departmental.

Directors must reconcile the concerns of various stakeholder groups, and respect views of colleagues who may have a different perspective. Non-financial considerations need to be taken into account.

Corporate Social Responsibility Committee

The evolution of corporate social responsibility in India refers to changes over time in India of the cultural norms of companies engagement of Corporate Social Responsibility (**CSR**), with CSR referring to way that businesses are managed to bring about an overall

positive impact on the communities, cultures, societies and environments in which they operate.

The fundamentals of CSR rest on the fact that not only public policy but even corporates should be responsible enough to address social issues. Thus companies should deal with the challenges and issues looked after to a certain extent by the states.

Among other countries, India has one of the richest traditions of CSR. Much has been done in recent years to make Indian entrepreneurs aware of social responsibility as an important segment of their business activity but CSR in India has yet to receive widespread recognition. If this goal has to be realised then the CSR approach of corporates has to be in line with their attitudes towards mainstream business- companies setting clear objectives, undertaking potential investments, measuring and reporting performance publicly.

As discussed above, CSR is not a new concept in India. Ever since their inception, large corporate houses in India have been involved in serving the community. Through donations and charity events, many other organizations have been doing their part for the society. The basic objective of CSR in these days is to maximize the company's overall impact on the society and stakeholders. CSR policies, practices and programs are being comprehensively integrated by an increasing number of companies throughout their business operations and processes.

A growing number of corporates feel that CSR is not just another form of indirect expense but is important for protecting the goodwill and reputation, defending attacks and increasing business competitiveness.

Companies have specialised CSR teams that formulate policies, strategies and goals for their CSR programs and set aside budgets to fund them. These programs are often determined by social philosophy which have clear objectives and are well defined and are aligned with the mainstream business.

The programs are put into practice by the employees who are crucial to this process. CSR programs ranges from community development to development in education, environment and healthcare etc.

Provision of improved medical and sanitation facilities, building schools and houses, and empowering the villagers and in process making them more self-reliant by providing vocational training and

a knowledge of business operations are the facilities that many companies focus on.

Also corporates increasingly join hands with NGOs and use their expertise in devising programs which address wider social problems.

One of the key changes in the Companies Act, 2013 is the introduction of a Corporate Social Responsibility section making India the first country to mandate CSR through a statutory provision. While CSR is not mandatory for companies, the rules are in line with the 'Comply or Explain' principle with penalties applicable only if an explanation is not offered.

The provisions of the Section may be summarized as under:

1. The Section applies to the following classes of companies during any financial year:
 - (i) Companies having Net Worth of rupees five hundred crore or more;
 - (ii) Companies having turnover of rupees one thousand crore or more;
 - (iii) Companies having Net Profit of rupees five crore or more
2. The companies specified above shall constitute a Corporate Social Responsibility Committee (CSR Committee) of the Board.
3. The CSR Committee shall consist of three or more Directors, out of which at least one Director shall be an Independent Director.
4. After taking into account the recommendations of the CSR Committee, the Board shall approve the CSR Policy for the company.
5. The contents of the Policy shall be disclosed in the Board's report.
6. It shall also be placed on the Company's website, if any, in a manner to be prescribed by the Central Government.
7. The Board shall ensure that the activities as are included in the CSR Policy (from the activities as specified in Schedule VII) are undertaken by the Company.

The following additional features of the Section are relevant:

1. While spending the amount earmarked for CSR activities, the company shall give preference to the local area and areas around it where it operates;
2. If the Company fails to spend the amount, the Board shall

specify the reasons for not spending the amount in the Board's Report.

3. The eligible companies are required to spend in every financial year, at least two per cent of the Average Net Profits of the Company made during the three immediately preceding financial years in pursuance of its CSR Policy. For this purpose, "Average Net Profit" shall be calculated in accordance with the provisions of Section 198 of the Companies Act, 2013.

Other Board Committees

In addition to the Committees of the Board mandated by the Companies Act, 2013 viz, Audit Committee, Nomination and Remuneration Committee, Stakeholders Relationship Committee and the CSR Committee, Board of Directors may also constitute other Committees to oversee a specific objective or project. The nomenclature, composition and role of such Committees will vary, depending upon the specific objectives of the company.

A few examples of such Committees prevalent in the corporate sector in India and abroad are given below:

1. *Corporate Governance Committee*

The Corporate Governance Committee is responsible for considering and making recommendations to the Board concerning the appropriate size, functions and needs of the Board. The Corporate Governance Committee may, at its sole discretion, engage director search firms and has the sole authority to approve the fees and other retention terms with respect to any such firms. The Corporate Governance Committee also has the authority, as necessary and appropriate, to consult with other outside advisors to assist in its duties to the Company.

2. *Science, Technology & Sustainability Committee*

It is composed of non-employee Directors, determined to be "independent" under the listing standards of the New York Stock Exchange. It

- Monitors and reviews the overall strategy, direction and effectiveness of the Company's research and development.
- Serves as a resource and provides input, as needed, regarding the scientific and technological aspects of product safety matters.

- Reviews the Company's policies, programs and practices on environment, health, safety and sustainability.
- Assists the Board in identifying and comprehending significant emerging science and technology policy and public health issues and trends that may impact the Company's overall business strategy.
- Assists the Board in its oversight of the Company's major acquisitions and business development activities as they relate to the acquisition or development of new science or technology.

3. *Regulatory, Compliance & Government Affairs Committee*

It consists of non-employee directors, determined to be "independent" under the listing standards of the New York Stock Exchange:

- Oversees the Company's non-financial compliance programs and systems with respect to legal and regulatory requirements.
- Oversees compliance with any ongoing Corporate Integrity Agreements or any similar undertakings by the Company with a government agency.
- Reviews the organization, implementation and effectiveness of the Company's health care compliance & ethics and quality & compliance programs.
- Oversees the Company's Policy on Business Conduct and Code of Business Conduct & Ethics for Members of the Board of Directors and Executive Officers.
- Reviews the Company's governmental affairs policies and priorities and other public policy issues facing the Company.
- Reviews the policies, practices and priorities for the Company's political expenditure and lobbying activities.

4. *Risk Committee*

(1) The recently amended Clause 49 of the Listing Agreement requires as under:

- A. The company shall lay down procedures to inform Board members about the risk assessment and minimization procedures.

- B. The Board shall be responsible for framing, implementing and monitoring the risk management plan for the company.
- C. The company shall also constitute a Risk Management Committee. The Board shall define the roles and responsibilities of the Risk Management Committee and may delegate monitoring and reviewing of the risk management plan to the committee and such other functions as it may deem fit.

The provisions of (C) above shall be applicable to top 100 listed companies by market capitalisation as at the end of the immediate previous financial year

Power of Board: Section 179

Section 179 of the Act deals with the powers of the board; all powers to do such acts and things for which the company is authorised is vested with board of directors. But the board can act or do the things for which powers are vested with them and not with general meeting.

The following (section 179(3) and Rule 8) powers of the Board of directors shall be exercised only by means of resolutions passed at meetings of the Board, namely :-

- (1) to make calls on shareholders in respect of money unpaid on their shares;
- (2) to authorise buy-back of securities under section 68;
- (3) to issue securities, including debentures, whether in or outside India;
- (4) to borrow monies;
- (5) to invest the funds of the company;
- (6) to grant loans or give guarantee or provide security in respect of loans;
- (7) to approve financial statement and the Board's report;
- (8) to diversify the business of the company;
- (9) to approve amalgamation, merger or reconstruction;
- (10) to take over a company or acquire a controlling or substantial stake in another company;
- (11) to make political contributions;
- (12) to appoint or remove key managerial personnel (KMP);

- (13) to take note of appointment(s) or removal(s) of one level below the Key Management Personnel;
- (14) to appoint internal auditors and secretarial auditor;
- (15) to take note of the disclosure of director's interest and shareholding;
- (16) to buy, sell investments held by the company (other than trade investments), constituting five percent or more of the paid-up share capital and free reserves of the investee company;
- (17) to invite or accept or renew public deposits and related matters;
- (18) to review or change the terms and conditions of public deposit;
- (19) to approve quarterly, half yearly and annual financial statements or financial results as the case may be.

The Board may, by a resolution passed at a meeting, delegate to any committee of directors, the managing director, the manager or any other principal officer of the company or in the case of a branch office of the company, the principal officer of the branch office, the powers specified in (4) to (6) above on such conditions as it may specify.

The banking company is not covered under the purview of this section. The company may impose restriction and conditions on the powers of the Board.

SECTION 180 : Restriction on Powers of Board

The board can exercise the following powers only with the consent of the company by special resolution, namely –

- (a) to sell, lease or otherwise dispose of the whole or substantially the whole of the undertaking of the company or where the company owns more than one undertaking, of the whole or substantially the whole of any of such undertakings.
- (b) to invest otherwise in trust securities the amount of compensation received by it as a result of any merger or amalgamation;
- (c) to borrow money, where the money to be borrowed, together with the money already borrowed by the company will exceed aggregate of its paid-up share capital and free reserves, apart from temporary loans obtained from the company's bankers in the ordinary course of business;
- (d) to remit, or give time for the repayment of, any debt due from a director.

The special resolution relating to borrowing money exceeding paid up capital and free reserves specify the total amount up to which the money may be borrowed by Board.

The title of buyer or the person who takes on lease any property, investment or undertaking on good faith cannot be affected and also in case if such sale or lease covered in the ordinary business of such company.

The resolution may also stipulate the conditions of such sale and lease, but this doesn't authorise the company to reduce its capital except the provisions contained in this Act.

The debt incurred by the company exceeding the paid up capital and free reserves is not valid and effectual, unless the lender proves that the loan was advanced on good faith and also having no knowledge of limit imposed had been exceeded.

SECTION 181 : Contributions to Charitable Funds and Political Parties

The power of making contribution to 'bona fide' charitable and other funds is available to the board subject to certain limits.

Further, the permission of company in general meeting is required if such contribution exceeds five percent of its average net profits for the three immediately preceding previous years.

SECTION 182 : Prohibitions and Restrictions Regarding Political Contributions

The non-government company or the company which has been in existence less than three financial years may contribute any amount directly or indirectly to any political party.

Further, the limit of contribution to political parties is 7.5% of the average net profits during the three immediately preceding financial years.

The contribution must be authorised by board in its meeting by resolution and such resolution deemed to be the justification in law for such contribution.

The donation may be directly or indirectly. The contribution so made if or likely to affect the public support for a political party deemed to be the contribution for political purpose.

If the expenditure incurred on advertisement in any publication i.e. souvenir, brochure, tract, pamphlet or the like is deemed as political

contribution if such publication is by or on behalf of political party or if not, then for the advantage to such political party for a political purpose.

The company is required to disclose in its profit and loss account any amount or amounts contributed by it to any political party during the financial year and the particular of total amount contributed and the name of political party to whom the contribution so made.

Penalty for Contravention

The contribution in contravention of the provisions of this section, the company shall be punishable for an amount of which may extend to five times of the amount so contributed and every officer who is in default shall be punishable with imprisonment for a term which may extend to six months and with fine which may extend to five times of the amount so contributed.

Section 183 : Power of Board and other Persons to make Contributions to National Defence Fund, etc.

The Board is authorised to contribute such amount as it thinks fit to the National Defence Fund or any other fund approved by the Government for the purpose of national defence.

The company is required to disclose in its profit and loss account the total amount or amounts contributed by it during the financial year.

Section 184 : Disclosure of Interest by Director

The Act provides for the disclosure by directors relating his concern or interest in any company or companies or body corporate (including shareholding interest), firms or other association of individuals by giving a notice in writing in form MBP 1 (Rule 9(1)) at the first meeting of board after being appointed as director and at first meeting of board of every financial year, in addition to this, any change required to be disclosed in next board meeting.

Every director is required to disclose the nature of his concern or interest at the meeting of board in which the contract or arrangement is discussed and he has not to participate in such meeting.

The abovementioned interest may be direct or indirect and relating to some contract or arrangement or proposed contract or arrangement entered into or to be entered into with a body corporate in which such director or such director in association with other director holds more than two percent shareholding or is a promoter, manager, Chief

Executive Officer of that body corporate or with a firm or other entity in which such director is a partner, owner or member as the case maybe.

It shall be the duty of the director giving notice of interest to cause it to be disclosed at the meeting held immediately after the date of the notice. (Rule 9(2))

If a director is not concerned or interested at the time of contract but, subsequently becomes concerned or interested is required to disclose his interest or concern at the first meeting of the board.

All notices shall be kept at the registered office and such notices shall be preserved for a period of eight years from the end of the financial year to which it relates and shall be kept in the custody of the company secretary of the company or any other person authorized by the Board for the purpose. (Rule 9(3))

If a contract or arrangement entered into by the company without disclosure of interest by director or with participation by a director who is concerned or interested in any way, directly or indirectly, in the contract or arrangement, shall be voidable at the option of the company.

The contravention of the provisions leads to punishment for a term which may extend to one year or with fine which shall not be less than fifty thousand rupees but which may extend to one lakh rupees or both.

Any contract or arrangement entered into or to be entered into between two companies, where any director of any company holds more than two percent of the paid up capital in other company, the provisions of this section shall not apply.

Section 185: Loans to Directors, etc.

No company shall directly or indirectly advance any loan to any of its directors or to any person in whom director is interested or give any guarantee or provide any security in connection with any loan taken by him or such other person.

But a company may advance loan to managing or whole-time director as part of the conditions of service extended by the company to all its employees or pursuant to any scheme approved by the members by a special resolution or the company provides loans or gives guarantee or securities for the due repayment of any loan in due course of its business.

Rule 10 provides that any loan made by a holding company to its wholly owned subsidiary company or any guarantee given or security provided by a holding company in respect of any loan made to its wholly owned subsidiary company is exempted from the requirements under this section and any guarantee given or security provided by a holding company in respect of loan made by any bank or financial institution to its subsidiary company is exempted from the requirements under this section; provided that such loans are utilised by the subsidiary company for its principle business activities.

Penalty

The contravention of provisions of this section leads to punishment with fine which shall not be less than five lakh rupees but which may extend to twenty five lakh rupees. The director or to whom loan or advance is given or guarantee or security is given or provided shall be imprisonment which may extend to six months or with fine mentioned above or with both.

Section 186 : Loan and Investment by a Company

Companies can make investments only through two layers of investment companies subject to exceptions which includes company incorporated outside India.

A company can't directly or indirectly give any loan to any person or other body corporate; give any guarantee or provide security in connection with a loan to any other body corporate or person; and acquire by way of subscription, purchase or otherwise, the securities of any other body corporate, exceeding sixty percent of its paid-up share capital, free reserves and securities premium account or one hundred percent of its free reserves and securities premium account, whichever is more.

If the loan exceeding the limits, prior approval of the company in general meeting is necessary and it shall be through special resolution. The prior approval of company is not necessary in case the company is disclosing the details of such loans or guarantee or security or acquisition in the financial statement. (Rule 11(1))

The company is required to disclose in its financial statement the full particular of loans given, investment made or guarantee given or security provided with its purpose.

The decision of board should be unanimous and the prior approval of public financial institution is to be obtained if exceeds the limit and company is not in default in repayment of loan installment or interest thereon.

No company registered under section 12 of the Securities and Exchange Board of India Act, 1992 and also covered under such class or classes of companies which may be notified by the Central Government in consultation with the Securities and Exchange Board, shall take any inter-corporate loan or deposits, in excess of the limits specified under the regulations applicable to such company, pursuant to which it has obtained certificate of registration from the Securities and Exchange Board of India. (Rule 11.3)

No loan shall be given under this section at a rate of interest lower than the prevailing yield of one year, three year, five year or ten year Government Security closest to the tenor of the loan.

A company who is in default in the repayment of any deposits accepted can't give any loan or give any guarantee or provide any security or make an acquisition till such default is subsisting.

Maintenance of Register (Rule 12)

Every company giving loan or giving guarantee or providing security or making an acquisition of securities shall, from the date of its incorporation, maintain a register in Form MBP 2 and enter therein separately, the particulars of loans and guarantees given, securities provided and acquisitions made as aforesaid.

The entries in the register shall be made chronologically in respect of each such transaction within seven days of making such loan or giving guarantee or providing security or making acquisition.

The register shall be kept at the registered office of the company and the register shall be preserved permanently and shall be kept in the custody of the company secretary of the company or any other person authorised by the Board for the purpose.

The entries in the register (either manual or electronic) shall be authenticated by the company secretary of the company or by any other person authorized by the Board for the purpose. A register can be maintained either manually or in electronic mode.

The extract from the register may be furnished to any member of the company on payment of fee as may be prescribed in the Articles of the company which shall not exceed ten rupees for each page.

Special Resolution (Rule 13)

Where the aggregate of the loans and investment so far made, the amount for which guarantee or security so far provided to or in all other bodies corporate along with the investment, loan, guarantee or

security proposed to be made or given by the Board, exceed the limits specified under section 186 no investment or loan shall be made or guarantee shall be given or security shall be provided unless previously authorised by a special resolution passed in a general meeting.

A resolution passed at a general meeting in terms of sub-section (3) of section 186 to give any loan or guarantee or investment or providing any security or the acquisition under sub section (2) of section 186 shall specify the total amount up to which the Board of Directors are authorised to give such loan or guarantee, to provide such security or make such acquisition:

Provided, that the company shall disclose to the members in the financial statement the full particulars in accordance with the provision of sub-section (4) of section 186.

Penalty

The contravention of the provisions of this section imposes punishment for the company with fine which shall not be less than twenty five thousand rupees but may extend to five lakh rupees.

Every officer of company in default shall be punishable with imprisonment for term which may extend to two years and with fine not less than twenty five thousand rupees but which may extend to five lakh rupees.

Section 187: Investments of Company to be held in its Own Name

All investment made or held by a company in a property, security or other asset must be made and held by it in its own name.

The company may hold any shares in its subsidiary company in the name of any nominee or nominees of the company, if it is necessary to do so, to ensure that the number of members of the subsidiary company is not reduced below the statutory limit.

Exceptions

A company may deposit with a bank, being the bankers of the company, any shares or securities for the collection of any dividend or interest payable thereon; or

A company may deposit with, or transferring to, or holding in the name of, the State Bank of India or a scheduled bank, being the bankers of the company, shares or securities, in order to facilitate the transfer thereof, but required to again hold the shares or securities in its own name within a period of six months;

A company may deposit with, or transferring to, any person any shares or securities, by way of security for the repayment of any loan advanced to the company or the performance of any obligation undertaken by it;

A company may hold investments in the name of a depository when such investments are in the form of securities held by the company as a beneficial owner.

Maintenance of Register (Rule 14)

Every company shall, from the date of its registration, maintain a register in Form MBP 3 and enter therein, chronologically, the particulars of investments in shares or other securities beneficially held by the company but which are not held in its own name and the company shall also record the reasons for not holding the investments in its own name and the relationship or contract under which the investment is held in the name of any other person.

Further, the company shall also record whether such investments are held in a third party's name for the time being or otherwise.

The register shall be maintained at the registered office of the company. The register shall be preserved permanently and shall be kept in the custody of the company secretary of the company or if there is no company secretary, any director or any other officer authorised by the Board for the purpose.

Entries in the register shall be authenticated by the company secretary of the company or by any other person authorized by the Board for the purpose.

The said register shall be open to inspection by any member or debenture-holder of the company without any charge during business hours subject to such reasonable restrictions as the company may by its articles or in general meeting impose.

Penalty

In case of contravention of this section, the company shall be punishable with fine which shall not be less than twenty-five thousand rupees but which may extend to twenty-five lakh rupees and every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to six months or with fine which shall not be less than twenty-five thousand rupees but which may extend to one lakh rupees, or with both.

Section 188: Related Party Transactions**Related Party**

With reference to company, the term 'related party' means and includes the following:

- a director or his relative,
- KMP or their relative,
- a firm in which a director manager or his relative is a partner,
- a private company in which a director or manger is a director or holds along with his relatives, more than 2% of its paid-up share capital,
- a person on whose advice, directions or instruction (except given in professional capacity) a director or manager is a accustomed to act,
- a holding/ subsidiary or associate company, subsidiary's subsidiary, and such person as would be prescribed.

Nature of Transactions

The scope of dealing with Related Party Transactions has been widened in Companies Act, 2013. The contracts or arrangements with related party which comes with respect to the following shall be covered under the scope of this provision:

- (a) sale, purchase or supply of any goods or materials;
- (b) selling or otherwise disposing of, or buying, property of any kind;
- (c) leasing of property of any kind;
- (d) availing or rendering of any services;
- (e) appointment of any agent for purchase or sale of goods, materials, services or property;
- (f) such related party's appointment to any office or place of profit in the company, its subsidiary company or associate company; and
- (g) underwriting the subscription of any securities or derivatives thereof, of the company.

However, nature of transactions covered are comprehensive as they include routine to rare supply of goods or material either by way of direct sale, purchase or supply of any goods or services (technical

support, maintenance, consultancy, advisory, leasing of property or sharing professional knowledge etc.) or by appointing agent for the same and underwriting financial instruments of the Company. While entering into such type of transactions, Company will be required to take prior approval of Board of Directors, by way of a resolution passed in the board meeting.

The transactions done in ordinary course of business on arm length's basis shall be outside the scope of this provision.

Entering into Contract or Arrangement with Related Party

A company shall enter into any contract or arrangement with a related party subject to the following (Rule 15) conditions –

- (1) The agenda of the Board meeting at which the resolution is proposed to be moved shall disclose-
 - (a) the name of the related party and nature of relationship;
 - (b) the nature, duration of the contract and particulars of the contract or arrangement;
 - (c) the material terms of the contract or arrangement including the value, if any;
 - (d) any advance paid or received for the contract or arrangement, if any;
 - (e) the manner of determining the pricing and other commercial terms, both included as part of contract and not considered as part of the contract;
 - (f) whether all factors relevant to the contract have been considered, if not, the details of factors not considered with the rationale for not considering those factors; and
 - (g) any other information relevant or important for the Board to take a decision on the proposed transaction.
- (2) Where any director is interested in any contract or arrangement with a related party, such director shall not be present at the meeting during discussions on the subject matter of the resolution relating to such contract or arrangement.
- (3) For the purposes of first proviso to sub-section (1) of section 188, except with the prior approval of the company by a special resolution –
 - (i) a company having a paid-up share capital of ten crore rupees

- or more shall not enter into a contract or arrangement with any related party; or
- (ii) a company shall not enter into a transaction or transactions, where the transaction or transactions to be entered into –
 - (a) as contracts or arrangements with respect to clauses (a) to (e) of sub-section (1) of section 188 with criteria, as mentioned below –
 - (i) sale, purchase or supply of any goods or materials directly or through appointment of agents exceeding twenty five percent. of the annual turnover as mentioned in clause (a) and clause (e) respectively of sub-section (1) of section 188;
 - (ii) selling or otherwise disposing of, or buying, property of any kind directly or through appointment of agents exceeding ten percent. of net worth as mentioned in clause (b) and clause (e) respectively of sub-section (1) of section 188;
 - (iii) leasing of property of any kind exceeding ten percent. of the net worth or exceeding ten percent. of turnover as mentioned in clause (c) of sub-section (1) of section 188;
 - (iv) availing or rendering of any services directly or through appointment of agents exceeding ten percent. of the net worth as mentioned in clause (d) and clause (e) of sub-section (1) of section 188;
 - (b) appointment to any office or place of profit in the company, its subsidiary company or associate company at a monthly remuneration exceeding two and half lakh rupees as mentioned in clause (f) of sub-section (1) of section 188; or (c) remuneration for underwriting the subscription of any securities or derivatives thereof of the company exceeding one percent. of the net worth as mentioned in clause (g) of sub-section (1) of section 188.
- (2) In case of wholly owned subsidiary, the special resolution passed by the holding company shall be sufficient for the purpose of entering into the transactions between wholly owned subsidiary and holding company.
- (3) The explanatory statement to be annexed to the notice of a

general meeting convened pursuant to section 101 shall contain the following particulars namely:

- (a) name of the related party ;
- (b) name of the director or key managerial personnel who is related, if any;
- (c) nature of relationship;
- (d) nature, material terms, monetary value and particulars of the contract or arrangement;
- (e) any other information relevant or important for the members to take a decision on the proposed resolution.

Criteria for prior Approval of Company through Special Resolution

The company shall enter in to related party transaction only by prior approval of the company by way of special resolution in general meeting, in following:

- (i) a company having a paid-up share capital of rupees one crore or more shall not enter into a contract or arrangement with any related party; or
- (ii) a company shall not enter into a transaction or transactions, where the transaction or transactions to be entered into
 - (a) individually or taken together with previous transactions during a financial year, exceeds five percent of the annual turnover or twenty percent of the net worth of the company as per the last audited financial statements of the company, whichever is higher, for contracts or arrangements as mentioned in clauses (a) to (e) of sub-section (1) of section 188; or
 - (b) relates to appointment to any office or place of profit in the company, its subsidiary company or associate company at a monthly remuneration exceeding one lakh rupees as mentioned in clause (f) of sub-section (1) of section 188; or
 - (c) is for a remuneration for underwriting the subscription of any securities or derivatives thereof of the company exceeding ten lakh rupees as mentioned in clause (g) of sub-section (1) of section 188;

except with the prior approval of the company by a special resolution.

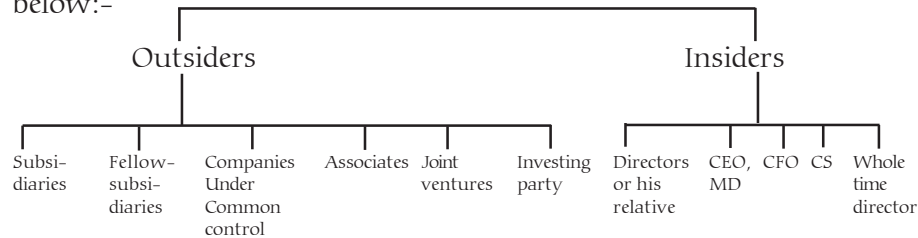
For the purposes of second proviso to sub-section (1) of section 188, in case of wholly owned subsidiary, the special resolution passed by the holding company shall be sufficient for the purpose of entering into the transactions between wholly owned subsidiary and holding company.

The explanatory statement to be annexed to the notice of a general meeting convened pursuant to section 101 shall contain the following particulars:

- (a) name of the related party ;
- (b) name of the director or key managerial personnel who is related, if any;
- (c) nature of relationship;
- (d) nature, material terms, monetary value and particulars of the contract or arrangement;
- (e) any other information relevant or important for the members to take a decision on the proposed resolution.

No member of the company shall vote on such special resolution, to approve such contracts or arrangement, if such member is a related party.

The related party in relation to Company can be explained as below:-



Where the transactions mentioned above are carried out or done in the ordinary course of business and on the arm's length transaction basis, then there is no requirement of obtaining approval from Board of Directors.

Arms Length Transaction

Arm's length transaction would mean transaction between two related or affiliated parties that is conducted as if they were unrelated, so that there is no question of a conflict of interest. The concept of an arm's length transaction is to ensure that both parties in the deal are

acting in their own self-interest and are not subject to any pressure or duress from the other part

Disclosure in Board's Report

Every related party contracts or arrangements shall have to be disclosed in the Board's report and referred to shareholders along with the justification for entering into such type of transactions.

Consequences of Contravention of Provisions

In case, where any contract or arrangement is entered into by a director or any other employee, without obtaining the consent of the Board or approval by a special resolution in the general meeting under sub-section (1) and,

- (i) if it is not ratified by the Board or
- (ii) by the shareholders at a meeting within three months from the date on which such contract or arrangement was entered into,

such contract or arrangement shall be voidable at the option of the Board and if the contract or arrangement is with a related party to any director, or is authorised by any other director, the directors concerned shall indemnify the company against any loss incurred by it.

Recovery of Loss in Related Party Transaction

Besides subsequent approval, it shall be open to the company to proceed against a director or any other employee who had entered into such contract or arrangement in contravention of the provisions of this section for recovery of any loss sustained by it as a result of such contract or arrangement.

Penal Provisions

Any director or any other employee of a company, who authorised to enter into the contracts or arrangement, in violation of the provisions of this section, shall be punishable as under -

- (i) In case of listed company – Any director or other employee of the listed company be punishable with,
 - (a) imprisonment for a term which may extend to 1 year; or
 - (b) fine which shall not be less than twenty five thousand rupees but which may extend to five lakh rupees; or
 - (c) with both.

- (ii) In case of other than listed company – Any director or other employee of the unlisted company be punishable with fine which shall not be less than twenty five thousand rupees but which may extend to five lakh rupees.

Other Disclosures / Provisions

Following approaches and disclosures are also required in relation to the transaction between the company and related parties:

- Any arrangement between a company and its director in respect of acquisition of assets for consideration other than cash shall require prior approval by a resolution in general meeting and if the director or connected person is a director of its holding company, approval is required to be obtained by passing a resolution in general meeting of the holding company. [Section 192].
- Where a one person company limited by shares or by guarantee enters into a contract with the sole member of the company who is also its director, the company shall unless the contract is in writing, ensure that the terms of the contract or offer are contained in the memorandum or are recorded in the minutes of the first Board meeting held after entering into the contract. The company shall inform the Registrar about every contract entered in to by the company are recorded in the minutes. [Section 193]
- The Companies Act requires the Audit Committee to approve or modify transaction with related parties, scrutinise inter- corporate loans and investments and value undertaking or assets of the company, wherever it is necessary. Further, the Companies Act gives Audit Committee the authority to investigate into any matter falling under its domain and the power to obtain professional advice from external sources and have full access to information contained in the records of the company.

Related Party Transactions under the Listing Agreement

The provisions with regard to related party transactions under the recently amended Clause 49 of the Listing Agreement is as under:

- A. A related party transaction is a transfer of resources, services or obligations between a company and a related party, regardless of whether a price is charged.

- B. A 'related party' is a person or entity that is related to the company. Parties are considered to be related if one party has the ability to control the other party or exercise significant influence over the other party, directly or indirectly, in making financial and/or operating decisions and includes the following:
1. A person or a close member of that person's family is related to a company if that person:
 - a. is a related party under Section 2(76) of the Companies Act, 2013; or
 - b. has control or joint control or significant influence over the company; or
 - c. is a key management personnel of the company or of a parent of the company; or
 2. An entity is related to a company if any of the following conditions applies:
 - (a) The entity is a related party under Section 2(76) of the Companies Act, 2013; or
 - (b) The entity and the company are members of the same group (which means that each parent, subsidiary and fellow subsidiary is related to the others); or
 - (c) One entity is an associate or joint venture of the other entity (or an associate or joint venture of a member of a group of which the other entity is a member); or
 - (d) Both entities are joint ventures of the same third party; or
 - (e) One entity is a joint venture of a third entity and the other entity is an associate of the third entity; or
 - (f) The entity is a post-employment benefit plan for the benefit of employees of either the company or an entity related to the company. If the company is itself such a plan, the sponsoring employers are also related to the company; or
 - (g) The entity is controlled or jointly controlled by a person identified in (1).
 - (h) A person identified in (1)(b) has significant influence over the entity (or of a parent of the entity); or

Explanation : For the purpose of Clause 49(V) and Clause VII(B), the term “control” shall have the same meaning as defined in SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011.

- C. The company shall formulate a policy on materiality of related party transactions and also on dealing with Related Party Transactions.

Provided that a transaction with a related party shall be considered material if the transaction / transactions to be entered into individually or taken together with previous transactions during a financial year, exceeds five percent of the annual turnover or twenty percent of the net worth of the company as per the last audited financial statements of the company, whichever is higher.

- D. All Related Party Transactions shall require prior approval of the Audit Committee.
- E. All material Related Party Transactions shall require approval of the shareholders through special resolution and the related parties shall abstain from voting on such resolutions.

In terms of the Listing agreement, the following disclosures are envisaged:

1. Details of all material transactions with related parties shall be disclosed quarterly along with the compliance report on corporate governance.
2. The company shall disclose the policy on dealing with Related Party Transactions on its website and also in the Annual Report.

Meaning and Disclosure requirement for Related Party Transactions under Accounting Standard on Related Party Transactions (AS-18)

- I. The objective of AS-18 is to establish requirements for disclosure of:
 - related party relationships; and
 - transactions between a reporting enterprise and its related parties.
- II. AS-18 is mandatory for accounting periods beginning on or after 1st April, 2001 and is to be complied with, for the preparation of financial statements of each reporting enterprise and consolidated financial statements of holding companies.

III. Some of the important definitions under the AS are as follows:

- (i) **Related Party:** Parties are considered to be related, if at any time during the reporting period, one party has the ability to control the other party or exercise significant influence over the other party in making financial and/or operating decisions.
- (ii) **Control means**
 - a. ownership, directly or indirectly, of more than one half of the voting power of an enterprise, or
 - b. control of the composition of the board of directors in the case of a company or of the composition of the corresponding governing body in the case of any other enterprise, or
 - c. a substantial interest in voting power and the power to direct, by statute or agreement, the financial and/or operating policies of the enterprise.
- (iii) **Significant Influence** implies participation in the financial and/or operating policy decisions of an enterprise, but not control of those policies.

IV. AS-18 deals with following related party transactions:

- a) Enterprises that directly or indirectly by one or more intermediaries, control or are being controlled by reporting enterprise OR under common control with the reporting enterprise (this includes holding companies, subsidiaries and fellow subsidiaries). For eg : X Ltd has 60% shares of Y Ltd. Y Ltd has 52% share of Z Ltd. Then X Ltd and Z Ltd are related because X Ltd controls Z Ltd through Y Ltd.
- b) Associates and joint ventures of the reporting enterprise and the investing party or venturer in respect of which the reporting enterprise is an associate or a joint venture. For eg : A Ltd. has two associates, B Ltd. and C Ltd. In this case B Ltd. and C Ltd. are not related because B Ltd. is associated with A Ltd. and not with C Ltd. So if B Ltd. is a reporting enterprise, then only A Ltd. is related. If C Ltd. is reporting enterprise, then only A Ltd. is related. But if A Ltd. is reporting enterprise, then B Ltd. and C Ltd. are related.
- c) Individuals owning, directly or indirectly an interest in the voting power of the reporting enterprise that gives them

control or significant influence over the enterprise. The relatives of any such individual are also considered as related party. AS-18 defines relative as under :

In relation to an individual, means the spouse, son, daughter, brother, sister, father and mother who may be expected to influence, or be influenced by, that individual in his/her dealings with the reporting enterprise. For eg: Mr. M and Mrs. M have 45% shares in XYZ Ltd., then Mr. M and Mrs. M are related with enterprises. Father of Mr. M is also related with the enterprise.

- d) Key management personnel and relatives of such personnel. i.e. Managing Director or any director who has influence in policy making.
- e) Enterprises over which any person described in (c) or (d) is able to exercise significant influence. This includes enterprises owned by directors or major shareholders of the reporting enterprise and enterprises that have a member of key management in common with the reporting enterprise.

V. Following are not deemed to be related parties:

Two companies simply because they have a director in common, notwithstanding paragraph (d) or (e) above (unless the director is able to affect the policies of both companies in their mutual dealings);

- a) A single customer, supplier, franchiser, distributor, or general agent with whom an enterprise transacts a significant volume of business merely by virtue of the resulting economic dependence; and
- b) The following parties in the course of their normal dealings with an enterprise by virtue only of those dealings (although they may circumscribe the freedom of action of the enterprise or participate in its decision-making process):
 - providers of finance;
 - trade unions;
 - public utilities;
 - Government departments and government agencies including government sponsored bodies.

Following Disclosures are required to be made:

1. Name and nature of the related party relationship where control exists, the following should be disclosed by the reporting enterprise:
 - (a) the name of the transacting related party,
 - (b) a description of the nature of transactions and relationship between the parties,
 - (c) volume of the transactions either as an amount or as an appropriate proportion,
 - (d) any other elements of the related party transactions necessary for an understanding of the financial statements,
 - (e) outstanding items and provisions pertaining to related parties at the balance sheet date,
 - (f) amounts written off in respect of debts due from or to related parties.
2. Items of a similar nature may be consolidated and disclosed by type of related party.

Section 189: Register of Contracts or Arrangements in which Directors are interested

Every company is required to keep one or more registers in Form MBP 4 giving separately the particulars of all contracts or arrangements and shall enter therein the particulars of (Rule 16(1))-

- (a) company or companies or bodies corporate, firms or other association of individuals, in which any director has any concern or interest as mentioned in sub-section (1) of section 184. But the particulars of the company or companies or bodies corporate in which a director himself together with any other director holds two percent or less of the paid-up share capital would not be required to be entered in the register.
- (b) contracts or arrangements with a body corporate or firm or other entity as mentioned under sub-section (2) of section 184, in which any director is, directly or indirectly, concerned or interested; and
- (c) contracts or arrangements with a related party with respect to transactions to which section 188 applies;

The entries in the register shall be made at once, whenever there is a cause to make entry, in chronological order and shall be authenticated by the company secretary of the company or by any other person authorized by the Board for the purpose. (Rule 16(2))

Such register shall be kept at the registered office of the company and the register shall be preserved permanently and shall be kept in the custody of the company secretary of the company or any other person authorized by the Board for the purpose. (Rule 16(3))

Such register or registers are required to be placed before the next meeting of the Board and signed by all the directors present at the meeting.

Every director within thirty days of his appointment or relinquishment is required to disclose his concern or interest in other associations, which are required to be included in the register.

The register be kept at the registered office of the company and also open for inspection during business hours. The company shall provide extracts from such register to a member of the company on his request, within seven days from the date on which such request is made upon the payment of such fee as may be specified in the articles of the company but not exceeding ten rupees per page. (Rule 16(4))

Penalty

Every director who fails to comply is liable to a penalty of twenty-five thousand rupees.

Section 190 : Contract of Employment with Managing Director or Whole-Time Directors

Every company which is not a private company is required to keep the copy of contract if in writing with a managing director or whole-time director for contract of service or a written memorandum setting its terms if not in writing.

The abovementioned copies required to be kept open to inspection for any member of the company free of cost.

Penalty

The default in complying with the provisions of this section, the company is liable to a penalty of twenty five thousand rupees and every officer of the company who is in default liable to a penalty of five thousand rupees for each default.

Section 191: Payment to Director for Loss of Office, etc., in Connection with Transfer of Undertaking, Property or Shares

No director of a company shall receive any payment by way of compensation in case of transfer of the whole or any part of any undertaking or property of the company or the transfer to any person of all or any of the shares in a company; the following particulars mentioned in Rules 17 are required to be disclosed to the members of the company and they pass a resolution at a general meeting approving the payment of such amount:-

- (a) name of the director
- (b) amount proposed to be paid;
- (c) event due to which compensation become payable;
- (d) date of Board meeting recommending such payment;
- (e) basis for the amount determined;
- (f) reason/justification for the payment;
- (g) manner of payment - whether payable in cash or otherwise and how;
- (h) sources of payment; and
- (i) any other relevant particulars as the Board may think fit.

Any payment made by the company to a managing director or whole-time director or manager of the company by way of compensation for loss of office or as a consideration for retirement from office or in connection with such loss or retirement subject to the limit as set out under section 202. (Rule 17(2))

No payment shall be made to the managing director or whole time director or manager of the company by way of compensation for the loss of office or as consideration for retirement from office (Rule 17(3)) (other than notice pay and statutory payments in accordance with the terms of appointment of such director or manager, as applicable) or in connection with such loss or retirement if:

- (a) the company is in default in repayment of public deposits or payment of interest thereon;
- (b) the company is in default in redemption of debentures or payment of interest thereon;

- (c) the company is in default in repayment of any liability, secured or unsecured, payable to any bank, public financial institution or any other financial institution;
- (d) the company is in default in payment of any dues towards income tax, VAT, excise duty, service tax or any other tax or duty, by whatever name called, payable to the Central Government or any State Government, statutory authority or local authority (other than in cases where the company has disputed the liability to pay such dues);
- (e) there are outstanding statutory dues to the employees or workmen of the company which have not been paid by the company (other than in cases where the company has disputed the liability to pay such dues); and
- (f) the company has not paid dividend on preference shares or not redeemed preference shares on due date.

If the payment is not approved for want of quorum either in a meeting or an adjourned meeting, the proposal shall not be deemed to have been approved.

If a director of a company receives payment of any amount in contravention of sub-section (1) or the proposed payment is made before it is approved in the meeting, the amount so received by the director shall be deemed to have been received by him in trust for the company.

Penalty upon Contravention

The director who contravenes shall be punishable with fine which shall not be less than twenty-five thousand rupees but which may extend to one lakh rupees.

Section 192: Restriction on Non-Cash Transactions Involving Directors

A company can't enter into an agreement by which –

- (a) a director of the company or its holding, subsidiary or associate company or a person connected with him acquires or is to acquire assets for consideration other than cash, from the company; or
- (b) the company acquires or is to acquire assets for consideration other than cash, from such director or person so connected.

A company can enter into an arrangement only with the prior approval for such arrangement is accorded by a resolution of the

company in general meeting and if the director or connected person is a director of its holding company, approval shall also be required to be obtained by passing a resolution in general meeting of the holding company.

The notice for approval of the resolution by the company or holding company in general meeting shall include the particulars of the arrangement along with the value of the assets involved in such arrangement duly calculated by a registered valuer.

Any arrangement entered into by a company or its holding company in contravention of the provisions of this section shall be voidable at the instance of the company.

The arrangement will be valid if the restitution of any money or other consideration which is the subject matter of the arrangement is no longer possible and the company has been indemnified by any other person for any loss or damage caused to it; or any rights are acquired bona fide for value and without notice of the contravention of the provisions of this section by any other person.

Section 193: Contract by One Person Company

Where One Person Company limited by shares or by guarantee enters into a contract except in its ordinary course of business with the sole member of the company who is also the director of the company, the company shall ensure that the contract is in writing.

If the contract is not in writing, it ensure that the terms of the contract or offer are contained in a memorandum or are recorded in the minutes of the first meeting of the Board of Directors of the company held next after entering into contract.

The company is required to inform the Registrar about every contract entered into by the company and recorded in the minutes of the meeting of its Board within a period of fifteen days of the date of approval by the Board.

Section 194: Prohibition on Forward Dealings in Securities of Company by Director or Key Managerial Personnel

Directors and key managerial personnel are prohibited from buying in the company, or in its holding, subsidiary or associate company –

- (a) a right to call for delivery or a right to make delivery at a specified price and within a specified time, of a specified number of relevant shares or a specified amount of relevant debentures;
or

- (b) a right, as he may elect, to call for delivery or to make delivery at a specified price and within a specified time, of a specified number of relevant shares or a specified amount of relevant debentures.

Contravention and Penalty

Such director or key managerial personnel shall be punishable with imprisonment for a term which may extend to two years or with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees, or with both.

Such director or key managerial personnel is liable to surrender the same to the company and the company shall not register the securities so acquired in his name in the register, and if they are in dematerialised form, it shall inform the depository not to record such acquisition and such securities, in both the cases, shall continue to remain in the names of the transferors.

SECTION 195: Prohibition on Insider Trading of Securities

Insider trading is totally prohibited in the Act. Even a person other director or key managerial personnel is not allowed to insider trading. Any communication required in the ordinary course of business or profession or employment or under any law is not amounting to insider trading.

Meaning of Insider Trading

An act of subscribing, buying, selling, dealing or agreeing to subscribe, buy, sell or deal in any securities by any director or key managerial personnel or any other officer of a company either as principal or agent if such director or key managerial personnel or any other officer of the company is reasonably expected to have access to any non-public price sensitive information in respect of securities of company; or

An act of counselling about procuring or communicating directly or indirectly any non-public price-sensitive information to any person;

Contravention and Penalty

If any person contravenes the provisions of this section, he shall be punishable with imprisonment for a term which may extend to five years or with fine which shall not be less than five lakh rupees but which may extend to twenty-five crore rupees or three times the amount of profits made out of insider trading, whichever is higher, or with both.
