

# MEETINGS OF BOARD AND ITS POWERS

Lalit Jain  
Sr. Vice President and Company Secretary  
Jubilant Life Sciences Limited

June 23, 2014

# BACKGROUND

- ✓ Chapter XII (Section 173 to Section 195) of the Companies Act, 2013 (“the Act”) and the Companies (Meetings of Board and its Powers) Rules, 2014 (“the Rules”) deal with provisions relating to meetings of Board and its powers
- ✓ Some of the provisions of the Chapter XII have been made effective from September 12, 2013 [Restriction of Powers of Board – Section 180, Contribution to charitable funds- Section 181, Political contributions- Section 182, Contribution to National Defence fund- Section 183, Loans to Directors, etc- Section 185, Restriction on non-cash transaction involving Directors- Section 192, Prohibition on forward dealings and insider trading- Sections 194/195] and remaining provisions have been made effective from April 1, 2014
- ✓ The Rules corresponding to the provisions of Chapter XII have been notified with effect from April 1, 2014

## Meetings of Board (Section 173)

- First meeting - within 30 days of incorporation of every Company
- Subsequently, minimum 4 meetings in a year with maximum gap of 120 days between two consecutive meetings – Every Company other than OPC / Small Company / Dormant Company
- For OPC / Small Company / Dormant Company –  
At least 1 meeting in each half of a calendar year with gap of not less than 90 days between two meetings
- OPC having 1 Director only, need not hold any meeting
- Minimum 7 days' notice in writing by hand/by post/electronic means to all Directors at the address registered with the Company
- A meeting for business urgency may be convened at shorter notice, only if:
  - at least one Independent Director (“ID”), if any, present in the meeting; or
  - minutes to be circulated to all Directors and ratified by at least one ID, if any
- Participation of Directors in a meeting of Board may be either in person or through video conferencing or other audio visual means

## **Board Meetings through Video Conferencing**

**(Section 173(2) read with Rule 3)**

- Directors may participate in Board meeting through video conferencing (VC), where proceedings are capable of being recorded and stored and such Directors will be counted for quorum
  
- Following matters shall not be dealt with in any meeting held through electronic mode :
  - Approval of Annual Financial Statements and Board's report
  - Approval of Prospectus
  - Audit Committee Meetings for consideration of Accounts
  - Approval of matters relating to amalgamation, merger, demerger, acquisition and takeover
  
- Summary of procedures for convening and conducting a Board meeting through VC or other audio visual means :
  - Necessary arrangement to avoid failure of video or audio connection
  - Recording of proceedings and preserving the same till the time of completion of audit of particular year
  - No person other than directors to attend the meeting
  - Ensure that quorum is present throughout the meeting
  - Notice of meeting to include information regarding option available to participate through VC

(Rule 3)

## **Board Meetings through Video Conferencing**

**(Section 173(2) read with Rule 3)**

- Venue of meeting shall be in India
  - Director intending to participate through VC should intimate to Chairperson or CS in advance
  - Director may intimate his intention to participate through VC at the beginning of calendar year and the same will be valid for one calendar year
  - Registers under the Act to be placed at scheduled venue and deemed signed by directors attending the meeting through VC, if they give their consent
  - Minutes should include particulars of directors who attended the meeting through VC
  - Minutes to be circulated within 15 days' of meeting in writing or electronic mode as decided by Board
- 
- To ensure VC facility for all meetings of Board as a Director may opt for attending meeting through VC in the beginning of a calendar year

## Quorum for Meetings of Board (Section 174)

- Quorum for meeting –  $1/3$  of total strength of Board or two Directors, whichever is higher  
*(Total strength does not include Directors whose places are vacant / Any fraction of number to be rounded off as one)*
- Participation of Directors by audio-visual means to be counted for quorum
- If quorum is not available:
  - (a) Due to number of Directors being reduced below quorum:

Continuing Director(s) may act for increasing the Board's strength upto quorum or convening a general meeting
  - (b) Due to number of Interested Directors [u/s 184(2)] exceeding or equalling  $2/3$  of total strength of Board:

Directors not interested and present in the meeting, being not less than two, shall be quorum
  - (c) Subject to Articles of Association, meeting will be adjourned to next week (same day/time/place) or next succeeding day, if that day is national holiday
- Quorum provisions not applicable to OPC, if there is only one director

## **Resolution by Circulation**

### **(Section 175 read with Rule 5)**

- A resolution may be passed by Board or its committee by circulation, only if:
  - Draft resolution together with necessary documents, if any, is circulated to all Directors / members of Committee at the address registered with the Company in India
  - Draft resolution with necessary papers, if any, may be circulated by hand/by post/by courier/by electronic means, i.e. e-mail/fax
  - The resolution is approved by majority of directors / members, who are entitled to vote
- Resolution proposed to be passed by circulation shall be put to a physical meeting, if at least 1/3 Directors / members require so
- A resolution passed by circulation is required to be placed for noting at subsequent meeting of Board / Committee and incorporated in the minutes of that meeting

## Resolution by Circulation....Contd.

### **List of items that cannot be passed by circulation**

#### **(Section 179 read with Rule 8):**

- Making calls on shareholders in respect of money unpaid on their shares;
- Authorizing buy-back of securities under section 68;
- Issuing securities, including debentures, whether in or outside India;
- Borrowing monies
- Investing the funds of the company;
- Granting loans or giving guarantee or providing security in respect of loans;
- Approving financial statements and the Board's report;
- Diversification of business;
- Approving amalgamation, merger or reconstruction;
- Taking over of a company or acquiring a controlling or substantial stake in another company;
- Making political contributions;
- Appointment or removal of KMPs;
- Noting of appointment(s) or removal(s) of one level below KMPs;
- Appointment of internal auditors and secretarial auditor;
- Noting of disclosure of directors' interest and shareholding;
- Buying or selling 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;
- Inviting or accepting or renewing public deposits and related matters;
- Reviewing or changing the terms and conditions of public deposit; and
- Approving quarterly, half yearly and annual financial statements or financial results
- Related Party Transactions **[Section 188]**
- Filing of casual vacancy (Board) **[ Section 161(4)]**
- Filing of casual vacancy (KMP) **[Section 203(4)]**
- Appointment of MD/WTD or appointment of MD, if already MD/Manager in other Company **[ Section 196(4)/Third proviso to Section 203(3)]**



## **Powers of Board**

*(Section 179 read with Rule 8)*

- Section 179 read with Rule 8 deals with powers of Board of **a Company**
- The Board entitled to exercise all powers and to do all acts as the Company is authorised to do, except any power or act required to be done at a general meeting.
- The powers or actions of the Board are subject to the provisions of the Act or MoA / regulation made in General meeting
- The powers of Board are also subject to restrictions mentioned u/s 180

## **Restrictions on powers of Board** *(Section 180)*

- Approval of Shareholders (Special Resolution) is required to exercise the following powers by Board of **a Company**:
  - a) Sale, lease or otherwise disposal of the undertaking ;
  - b) Invest otherwise in trust securities the amount of compensation amount received as a result of any merger / amalgamation
  - c) Borrowings in excess of the paid up share capital and free reserves
  - d) Remit or give time for repayment of any debt due from a Director
  
- Section 180 is applicable to Private companies also
  
- Resolutions passed u/s 293 of the erstwhile Companies Act, 1956 for borrowings/creation of security will be sufficient compliance of Section 180 for one year from the date of notification of this Section, i.e. **upto Sept. 11, 2014**

# Powers of Board

*(Section 179(3) read with Rule 8)*

## Items to be transacted by Board

Items	At Physical Board meeting	Through Audio-Visual means	Through Circular Resolution	Powers can be delegated	Reference
Making calls on shareholders in respect of money unpaid on their shares	√	√	×	×	Section 179(3)
Authorizing buy-back of securities under Section 68	√	√	×	×	Section 179(3)
Issuing securities, including debentures, whether in or outside India	√	√	×	×	Section 179(3)
Borrowing monies	√	√	×	√	Section 179(3)*
Investing the funds of a Company	√	√	×	√	Section 179(3)*
Granting loan or giving guarantee or providing security in respect of loans	√	√	×	√	Section 179(3)*

\* Powers may be delegated to committee of Board / MD / Manager / other principal officer, for Branch office - Principal officer of Branch office

## Powers of Board....Contd.

### Items to be transacted by Board

Items	At Physical Board meeting	Through Audio-Visual means	Through Circular Resolution	Powers can be delegated	Reference
Approving financial statements and Board's report	√	×	×	×	Section 179(3) / Rule 4
Diversification of business	√	√	×	×	Section 179(3)
Approving amalgamation, merger or reconstruction	√	×	×	×	Section 179(3) / Rule 4
Taking over of a Company or acquiring a controlling or substantial stake in another Company	√	×	×	×	Section 179(3) / Rule 4
Making political contributions	√	√	×	×	Section 179(3) / Rule 8
Appointment or removal of KMPs	√	√	×	×	Section 179(3) / Rule 8

## Powers of Board....Contd.

### Items to be transacted by Board

Items	At Physical Board meeting	Through Audio-Visual means	Through Circular Resolution	Powers can be delegated	Reference
Noting of appointment(s) or removal(s) of one level below KMPs	√	√	×	×	Section 179(3) / Rule 8
Appointment of internal auditors and secretarial auditor	√	√	×	×	Section 179(3) / Rule 8
Noting of the disclosure of Director's interest and shareholding	√	√	×	×	Section 179(3) / Rule 8
Buying or selling 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	√	√	×	×	Section 179(3) / Rule 8

## Powers of Board....Contd.

### Items to be transacted by Board

Items	At Board meeting	Physical	Through Audio-Visual means	Through Circular Resolution	Powers can be delegated	Reference
Approving the prospectus	√		×	×	×	Section 179(3) / Rule 4
Inviting or accepting or renewing public deposits and related matters	√		√	×	×	Section 179(3) / Rule 8
Reviewing or changing the terms and conditions of public deposit	√		√	×	×	Section 179(3) / Rule 8
Approving quarterly, half yearly and annual financial statements or financial results as the case may be	√		×	×	×	Section 179(3) / Rule 4 / Rule 8
Related Party Transactions	√		√	×	×	Section 188

## Powers of Board....Contd.

### Items to be transacted by Board

Items	At Board meeting	Physical	Through Audio-Visual means	Through Circular Resolution	Powers can be delegated	Reference
Transfer of Securities	√	√	√	√	√	-
Allotment of Securities	√	√	√	√	√	-
Issue of Share Certificates	√	√	√	√	√	Section 46 read with Rules 5 (3) and 6 (2) (a) of Companies (Share Capital and Debentures)Rules, 2014
Contribution to charitable fund	√	√	√	√	√	Section 181
Contribution to National Defence Fund	√	√	√	√	√	Section 182
Appointment of Addl. Director	√	√	√	√	×	Section 161(1)
Appointment of Alternate Director	√	√	√	√	×	Section 161(2)
Filing of Casual vacancy (Board)	√	√	√	×	×	Section 161(4)

## Powers of Board....Contd.

### Items to be transacted by Board

Items	At Board meeting	Physical	Through Audio-Visual means	Through Circular Resolution	Powers can be delegated	Reference
Representation of corporations at meetings of companies / creditors	√		√	√	×	Section 113
Keeping of Books of Accounts at place other than Regd. Office	√		√	√	√	Section 128
Appointment of MD/WTD or appointment of MD, if already MD/Manager in other Company	√		√	×	×	Third proviso to Section 203
Filing of Casual vacancy in the office of KMP	√		√	×	×	Section 203(4)



## Audit Committee

[Section 177 read with Rule 6]

Particulars	Section 177 read with Rule 6	Revised Clause 49 of LA (*Effective from Oct. 1, 2014)
<b>Applicability</b>	<p><b>A.</b> All Listed Companies</p> <p><b>B.</b> All <b>Public companies</b> with:</p> <ul style="list-style-type: none"> <li>- <u>PUC: Rs 10 cr. or more</u>; or</li> <li>- <u>T/O: Rs 100 cr. or more</u>; or</li> <li>- <u>Loans/Borrowings/debenture/deposits : Rs 50 cr. or more</u></li> </ul> <p>(As per last Audited Financial Statements)</p> <p style="text-align: right;">(Rule 6)</p>	All Listed Companies
<b>Composition</b>	Min. 3 Directors with IDs forming a majority	Min. 3 Directors., out of which 2/3 shall be IDs
<b>Chairperson</b>	-	<p>Independent Director</p> <p>Chairperson to be present at AGM</p>
<ul style="list-style-type: none"> <li>• <u>Companies covered u/s 292A of the Companies Act, 1956 (“old Act”)</u> to reconstitute (in line with Section 177) this Committee within 1 year from commencement of the Companies Act, 2013</li> <li>• <u>Companies not covered u/s 292A of old Act</u> to constitute this Committee within 1 year from commencement of the Rules or appointment of IDs, whichever is earlier (<u>Notification dt 12.6.2014</u>)</li> <li>• Not applicable to Private Company including OPC / Small Company</li> </ul>		

## Audit Committee.....Contd.

Particulars	Section 177 (4)	Revised Clause 49 of LA (*Effective from Oct. 1, 2014)
<b>Major Terms of reference</b>	<ul style="list-style-type: none"> <li>a. Recommendation for appointment /remuneration/terms of Statutory Auditors</li> <li>b. Review of Auditors' independence / performance/effectiveness of audit process</li> <li>c. Approval for RPT including any modification(s)</li> <li>d. Examination of financial statement/Auditor's report thereon</li> <li>e. Scrutiny inter-corporate loans/ Investments</li> <li>f. Valuation of undertakings or assets</li> <li>g. Evaluation of inter financial controls and risk management systems</li> <li>h. Monitoring end use of funds raised through public offers and related matters</li> </ul>	<ul style="list-style-type: none"> <li>a. Oversight the Company's financial reporting process</li> <li>b. Approval for payment for other services by Statutory Auditors</li> <li>c. Review functioning of Whistle Blower Machanism</li> <li>d. Approval of appointment of CFO</li> <li>e. Review of Quarterly Financial results before submission to Board</li> <li>f. Looking into the reason for substantial default in payment to depositor, shareholders, etc.</li> <li>g. Discussion with Internal Auditors of any significant findings / follow up</li> <li>h. Discussion with Statutory Auditors about nature/scope of Audit before Audit Commences</li> <li>i. Items as per Section 177(4)</li> </ul>

# Nomination and Remuneration Committee

[Section 178 read with Rule 6]

Particulars	Section 178 read with Rule 6	Revised Clause 49 of LA (*Effective from Oct. 1, 2014)
<b>Applicability</b>	A. All Listed Companies B. All <b>Public companies</b> with: - PUC: <u>Rs 10 cr. or more; or</u> - T/O: <u>Rs 100 cr. or more; or</u> -Loans/Borrowings /debenture/deposits : <u>Rs 50 cr. or more</u> (As per last Audited Financial Statements) (Rule 6)	All Listed Companies
<b>Composition</b>	3 or more Non-executive Directors (NED), out of which min. 1/2 shall be IDs A Chairperson of the Company (Executive or Non-executive) may become a member only	Min. 3 Directors, all of whom shall be NED and min. 1/2 shall be Independent
<b>Chairperson</b>	Other than Chairperson of the Company, if any Chairperson to be present at General Meetings	Independent Director Chairperson could be present at AGM
<ul style="list-style-type: none"> <li>Constitution of this Committee within 1 year from commencement of the Rules or appointment of IDs, whichever is earlier (<u>Notification dt 12.6.2014</u>)</li> <li>Not applicable to Private Company including OPC / Small Company</li> </ul>		

## Nomination and Remuneration Committee.....Contd.

Particulars	Section 178	Revised Clause 49 of LA (*Effective from Oct. 1, 2014)
<b>Role</b>	<ul style="list-style-type: none"> <li>a. Identify 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 of Directors, their appointment and removal</li> <li>b. Carry out evaluation of every director's performance</li> <li>c. Formulate the criteria for determining qualifications, positive attributes and independence of a director and recommend to the Board a policy relating to the remuneration for the directors, key managerial personnel and other employees</li> </ul>	<ul style="list-style-type: none"> <li>a. Formulation of the criteria for determining qualifications/ positive attributes/independence of a director and recommend to the Board a remuneration policy of the directors, key managerial personnel and other employees</li> <li>b. Formulation of criteria for evaluation of Independent Directors and the Board</li> <li>c. Devising a policy on Board diversity</li> <li>d. Identifying persons who are qualified to become directors /who may be appointed in senior management in accordance with the criteria laid down, and recommend to the Board their appointment and removal</li> </ul>

## Stakeholders Relationship Committee [Section 178(5)]

Particulars	<i>Section 178(5)</i>	<u>Revised Clause 49 of LA</u> <i>(*Effective from Oct. 1, 2014)</i>
<b>Applicability</b>	All companies having more than 1,000 shareholders/debenture-holders/deposit-holders/any other security holders  (At any time during a Financial Year)	All Listed Companies
<b>Composition</b>	Consisting of a Chairperson who shall be Non-executive Director (NED) and other members as decided by Board	Under the Chairmanship of NED and such other members as decided by Board
<b>Chairperson</b>	Non-executive Director  Chairperson to be present at General Meetings	Non-executive Director
<b>Role</b>	Consider and resolve grievances of security holders	a. Consider and resolve grievances of security holders  b. Consider and resolve complaints relating to transfer of shares, non-receipt of balance sheet/declared dividends

## **Loans to Directors, etc.** **(Section 185 read with Rule 10)**

- **A Company** cannot give directly/ indirectly any loan to a Director or **to any other person in whom the director is interested** or guarantee / security in connection with such loan.
- **Any other Person in whom the Director is interested** means:
  - (a) any director of the lending company, or its holding company or any partner or relative of any such director
  - (b) any firm in which any such director or relative is a partner
  - (c) any private company of which any such director is a director or member
  - (d) any body corporate at a general meeting of which not less than 25% of the total voting power may be exercised or controlled by any such director, or by two or more such directors, together; or
  - (e) any body corporate, the Board/Managing Director/ Manager whereof is accustomed to act in accordance with the directions/ instructions of the Board/ any director(s) of the lending company.
- Section 185 not applicable:
  - if any loan is given to an MD as a part of conditions of service extended to all employees or as per a Scheme approved by Special Resolution
  - If the Company gives such loans/guarantees in ordinary course of business and such loan is at interest rate not below RBI Bank rate
- Loan / Guarantee / Security by holding company to its **WOS** (not all subsidiary companies) is exempt
- Guarantee / Security provided by Holding Company to its **Subsidiary company** (against loan by Bank/Financial Institution) is also exempt
- The **proviso to Rule 10** says that loans to be utilised by **subsidiary company** (not necessarily WOS) for its principal business activities

## **Loan and Investment by Company** (Section 186)

- **A Company** can make investments through maximum 2 layers of investment companies
- Restriction not applicable in case of :
  - Acquisition of any foreign company if such foreign company has investment subsidiaries beyond two layers as per the laws of such country;
  - A subsidiary company from having any investment subsidiary for the purposes of meeting any statutory requirement
- This provision will not affect existing investments/layers of companies. However, future investments through more than 2 layers of investment companies would be hit

## **Restriction on Loans / Investments / Guarantees**

**(Section 186 read with Rule 11)**

- **A Company** will have to obtain unanimous consent of the Board for giving loans/making investments and giving guarantee to **any person**
- Without prior approval of shareholders by way of a Special Resolution, a Company cannot give loans / make investments / give guarantees to any person exceeding, in aggregate, 60% of paid up share capital & free reserves or 100% of free reserves, whichever is more. However, such special resolution can be passed within one year from the date of notification of this section i.e. by March 31, 2015
- The Special Resolution should specify the total amount upto which the Board is authorised to give loans/guarantees and make investments
- No Shareholders' approval is required, if a Company:
  - gives loans/guarantees/securities or makes investment in its wholly owned subsidiary company
  - gives loans/guarantees/securities to a joint venture companybut the above to be included in the prescribed limits
- Details of loans/guarantees/securities /investments are required to be given in financial statement
- Prior approval of Public Financial Institution will be required, if:
  - any term loan has been obtained by the Company from it, and
  - amounts of loans/investments/guarantees, in aggregate, are in excess of prescribed limits as above, or;
  - there is default in repayment of loans/interest thereon.



## Restriction on Loans / Investments / Guarantees....Contd.

- No loan is to be given 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 tenure of the loan.
- A Company will not give loans/make investments/give guarantees, if there is default in repayment of deposits/interest thereon and such default is subsisting.
- Rule 22(16)(j) of the Companies (Management and Administration) Rules, 2014, requires an approval of shareholders through Postal Ballot with respect to giving loans or extending guarantees/securities in excess of the prescribed limit u/s 186(3)
- Details of loans/investments/guarantees are required to be entered within 7 days' in a Register (**MBP-2**), which is to be maintained permanently either manually or in electronic mode.

## **Restriction on Loans / Investments / Guarantees.....Contd.**

- The Register to be kept at Regd. Office and preserved permanently under the custody of CS or person authorised by Board
- Every entry in the Register (either manually or electronic) to be authenticated by CS or person authorised by Board
- Members may request for extract of the Register on payment of fee prescribed in the Articles of Association subject to maximum of Rs. 10 per page
- Full details of Loans/Investments/Guarantees/Securities to be disclosed in the Financial statements
- No applicability of provisions of Section 186:
  - In case of Banking Companies
  - Any acquisition by NBFC whose principal business is acquisition of securities
  - Any acquisition by a Company whose principal business is acquisition of securities
  - In case of shares allotted by way of further issue of shares u/s 62(1)(a)

## **Restriction on Loans / Investments / Guarantees.....Contd.**

### **Impact of Companies Act, 2013:**

- Loans to employees and employee welfare funds/trusts, etc. would be covered under Section 186
- Not allowed to give loans to employees and employee welfare funds/trusts at subsidised rates
- A nominal amount of loan (say Rs. 1000/-) to employees would also require prior Board's / Shareholders' approval / an entry in the Register

## **Related Party Transactions**

**(Section 188 read with Rule 15)**

Related Party, with reference to a Company, means:

- (i) a director / KMP or their relative;
- (ii) a firm, in which a director/his relative is a partner;
- (iii) a private company in which a director is a member/director;
- (iv) a public company in which a director is a director and holds along with his relatives, more than two percent of paid-up share capital;
- (v) any body corporate whose Board of Directors, MD is accustomed to act in accordance with the advice, directions or instructions of a director of the Company;
- (vi) any person on whose advice, directions or instructions a director or manager is accustomed to act:
- (vii) a holding, subsidiary or an associate company
- (viii) a director or KMP of the holding company or his relative

**[Section 2(76)]**

## Related Party Transactions.....Contd.

- **A Company** shall not enter into a transaction with a related party without the prior consent of the Board and shareholders, if:
  - the paid up share capital is Rs. 10 crores or more, **OR**
  - the transaction relates to sale, purchase or supply of any goods or materials directly or through appointment of agents exceeding 25% of the annual turnover
  - the transaction relates to sale or otherwise disposal of, or buying of, property of any kind directly or through appointment of agents exceeding 10% of net worth
  - the transaction relates to lease of property of any kind exceeding 10% of the net worth or exceeding 10% of turnover
  - the transaction is for availing or rendering of any services directly or through appointment of agents exceeding 10% of the net worth
  - the transaction relates to appointment of related party to any office or place of profit in the company, its subsidiary company or associate company at a monthly remuneration exceeding Rs 2.50 Lacs
  - the transaction relates to remuneration for underwriting the subscription of any securities or derivatives thereof of the company exceeding 1% the net worth

*(Turnover /Net Worth shall be on the basis of audited financial statement of preceding year)*

## **Related Party Transactions.....Contd.**

- No voting on Special resolution by a member, if related party
- No participation by Interested Director on the item with respect to contact with a related party
- No requirement of approval of the Board and shareholders, if any transaction is entered with a related party in ordinary course of business and on an arm's length basis.
- Details of every contract/arrangement with justification to be given in the Board's report
- The agenda of Board should include all necessary information, viz. Name of related party/nature of relationship/nature & duration of contract/material terms with value, other relevant information, etc.
- No Special Resolution (SR) by WOS, if SR is passed by holding company for entering into a transaction between WOS and holding company
- The explanatory statement to the notice of a general meeting shall contain name of the related party, director/KMP, who is interested, nature of relationship, material terms, monetary value & particulars of contracts

## Related Party Transactions.....Contd.

### Impact of Companies Act, 2013

- A Company:
    - with paid up share capital of Rs. 10 crores or more, shall not enter into even a single rupee transaction with related party without prior approval of shareholders
    - irrespective of size of the paid up share capital, shall not enter into transactions with related party without shareholders' approval, if the transaction amount is more than the limits specified in Rule 15(3)(ii)
- [Rule 15(3)]**
- For a transaction between holding company and its WOS, a Special Resolution passed by holding company to be sufficient compliance **[Explanation 2 to Rule 15(3)]**
  - Some cases where a Special Resolution cannot be passed. E.g. :
    - A transaction between S1 and S2 (both being WOS of H), Who will vote ?  
H- the holding company is not a party to transaction and hence not required to pass a special resolution. S1 and S2 need to pass special resolutions, but in both the cases, H-being sole shareholder-cannot vote being a related party to both
    - H, the holding company, having S as 75% subsidiary. A- an associate company, holds balance 25% shares in S. Here also, in case of a proposed transaction between H and S, both H and A, being related parties, cannot vote on the special resolution of S
    - RPT in case of Private Companies / OPC

## **Donations to charitable funds, etc. / Political Contributions** (Sections 181 / 182)

### **Donations to Charitable funds (Section 181):**

- **A Company** may contribute to *bonafide* charitable funds and other funds
- Prior Shareholders' approval required if, contribution in a financial year exceeds 5% of last 3 years' Avg. Net Profits
- Avg. Net Profits means profits as per books of account of the Company

### **Political Contributions (Section 182):**

- **A Company** (other than Govt. Company or a Company in existence for less than 3 years) can contribute upto 7.5% of last 3 years' Avg. Net Profits to any Political party/its affiliates
- A resolution in this regard to be passed in a physical meeting of Board
- Disclosure of amount of political contribution with name to be made in P&L account. However, no such disclosure would be required if political contribution is made through an Electoral Trust Company
- Electoral Trust Company to disclose details of contribution received / given in its Books of Accounts



## **Vigil Machanism**

### **[Section 177(9) read with Rule 7]**

- Following companies required to establish a vigil machanism for Directors and Employees to report genuine concern / grievances:
  - Listed companies
  - Companies accepting deposits from public
  - Companies that have borrowed moneys from Banks/PFIs over Rs. 50 crores
- Audit Committee shall oversee this machanism
- If no Audit Committee, the Board will nominate a Director to play the role of Audit committee
- This machanism should provide safeguards against victimisation and in exceptional cases, access to Chairperson of Audit Committee or Director nominated for this purpose
- In case of frivolous complaints, suitable action may be taken against concerned Director/employee
- Details of this machanism to be disclosed on the website, if any, of a Company and its Board's report

## **Disclosure of interest by Director** **(Section 184 read with Rule 9)**

- Every Director is required to disclose his concern or interest (including shareholding interest) in any Company or body corporate or firm or other association of Individuals in writing in **MBP-1**:
  - At the first Board meeting in which he participates as a Director
  - Subsequently, at the first Board meeting in every financial year
  - At the first Board meeting after any change in disclosure already made
- A Director giving notice of interest has to ensure that the notice be disclosed at the first meeting held immediately after the date of the notice
- Any contracts/arrangements with entities in which Directors are interested must be placed before Board and such Directors would not participate in discussion or voting on such items. These transactions refer to contracts or arrangements:
  - (a) with a body corporate in which a Director or such Director in association with any other Director, holds more than two percent shareholding of that body corporate or is promoter, manager, CEO of that body corporate; or
  - (b) with a firm or other entity in which a Director is a partner, owner or member, as the case may be
- If a Director becomes interested after entering into a contract/arrangement, he is required to disclose his interest forthwith or at the first Board meeting held after he becomes interested
- Any contract/arrangement entered into by a Company without disclosure or with participation by interested Director shall be voidable at the option of the Company

## Disclosure of Interest.....Contd.

- The provisions of this section do not apply if director of one company or two or more of them together holds or hold not more than 2% shareholding in other company
- Every notice of disclosure of interest is required to be preserved for 8 years from the end of financial year to which it relates under custody of CS or person authorised by Board

### Impact of Companies Act, 2013:

- Applicability of provisions of Section 184(2), only if a Director together with other Directors holds more than 2% of paid up share capital
- No entry in the Register u/s 189, if a Director together with other Directors holds 2% or less of paid up share capital **[Proviso to Rule 16]**
- Shareholding of Directors needs to be checked carefully (in view of min. limit of 2%)
- Filing of noting of disclosure of interest with RoC **[Section 117]**

## MISCELLANEOUS

- Defects in appointment of a Director shall not invalidate any act done by him  
[Section 176]
- Remuneration Policy(ies) to be disclosed in Board's report  
[Section 178(4)]
- Chairpersons of Nomination and Remuneration Committee / Stakeholders Committee or in absence of the Chairperson, an other member of the Committee authorised by him, to attend General Meetings  
[Section 178(7)]
- **A Company** may contribute such amount as it think fit to National Defence Fund or other fund approved by Central Govt. and amount of contribution will be disclosed in P&L account  
[Section 183]

### **Register of contracts / arrangements in which Directors are interested (Section 189 read with Rule 16)**

- **Every company** to keep one or more Registers (**MBP-4**) with details of contracts or arrangements to which Section 184(2) or Section 188 applies
- No entries to be made in the Register, if a Director himself together with other Directors holds 2% or less of paid up share capital
- The entries to be authenticated by CS or person authorised by Board and Register to be preserved permanently under custody of CS or person authorised by Board
- This Register to be produced at commencement of every general meeting and be accessible during continuation of the meeting
- Maintaining the Register not required, if value of goods / services does not exceed Rs. 5 Lacs in a year / in case of Banking company for collection of bills in ordinary course

## MISCELLANEOUS.....Contd.

### **Contract of employment with MD/WTD (Section 190)**

- A copy of contract of service with MD / WTD (a written memorandum setting out terms, if no contract in writing), to be kept at Regd. Office and open for inspection by members without payment of fee
- Not applicable to Private Companies including OPC / Small Company

### **Restriction on non-cash transactions (Section 192)**

- Without prior approval of shareholders, **a Company** shall not enter into an arrangement by which:
  - a Director of Company / its holding , subsidiary / associate company or person connected with him acquires or is to acquire assets from the Company for consideration other than cash
  - the Company acquires or is to acquire assets from such Director/person so connected for consideration other than cash
- Shareholders' approval of holding company would also be obtained, If director / connected person is a Director of holding Company

## MISCELLANEOUS.....Contd.

### **Payment to Directors for loss of office, etc . (Section 191 read with Rule 17)**

- In case of loss of office by Directors pursuant to transfer of undertaking, property or shares, no compensation or payment in lieu thereof to be made, unless authorised by shareholders
- Such payment may be made to MD/WTD, provided such payment does not exceed the remuneration he would have earned if he had been in office for the remainder of his term, or for three years, whichever is shorter
- The above payment to be computed on the basis of average remuneration actually earned by him during immediately preceding three years, or where he held office for less than three years, during such period.

### **Prohibition on forward dealings in securities (Section 194)**

- No Director of a Company or its KMPs shall involve in forward dealings (buying) in securities of the Company / its holding, subsidiary, associate company
- If a Director / KMP acquires securities in contravention of the Act, he shall be liable to surrender the same to the Company and the Company will not register in his name
- if securities so acquired in demat form, the Company shall inform the Depository not to record the acquisition

### **Prohibition on Insider Trading of securities (Section 195)**

- No person including any Director of a Company or its KMPs shall enter into insider trading
- No prohibition on any communication required in the ordinary course of business or profession or employment or under any law

## Evaluation of Performance of Directors

SI	Provisions of the Act	Evaluation of Performance of	Performance to be evaluated by
A	Section 178(2)	Independent Directors	Nomination and Remuneration Committee
		Non-independent Directors	
B	Section 134(3)(p)	Board of Directors (“Board”)	Board
		Committees of Board	
		Independent Directors	
		Non-independent Directors	
C	Schedule IV	Non-independent Directors	Independent Directors
		Board	
		Chairperson of the Company	
		Independent Directors	Board

## Impact on Private Companies / OPC / Small Companies

- **No borrowing in excess of paid up capital and free reserves without shareholders' approval (Section 180)**  
U/s 293 of the erstwhile Companies Act, 1956 ("old Act"), same was exempted
- **No loans to Directors, etc. is allowed (Section 185)**  
U/s 295 of old Act, same was exempted
- **Restriction on Loans / Investments (Section 186)**  
U/s 372A of old Act, same was exempted
- **No Related Party Transactions is allowed without prior shareholders' approval and no voting by member being related party**  
**(Section 188)**
- **No contribution to charitable funds over prescribed limit without shareholders' approval (Section 181)**  
U/s 293(1)(e) of old Act, same was exempted
- **No participation of a Director in Board meeting on item in which he is interested**  
**(Section 184)**  
U/s 300 of the old Act, same was not applicable
- **Non-cash transaction with a Director / person connected to him is not allowed without prior shareholders' approval (Section 192)**



***THANK YOU .....***

# Back up

## **Section 173- Meetings of Board**

*(1) Every company shall hold the first meeting of the Board of Directors within thirty days of the date of its incorporation and thereafter hold a minimum number of four meetings of its Board of Directors every year in such a manner that not more than one hundred and twenty days shall intervene between two consecutive meetings of the Board:*

Provided that the Central Government may, by notification, direct that the provisions of this sub-section shall not apply in relation to any class or description of companies or shall apply subject to such exceptions, modifications or conditions as may be specified in the notification.

*(2) The participation of directors in a meeting of the Board may be either in person or through video conferencing or other audio visual means, as may be prescribed, which are capable of recording and recognising the participation of the directors and of recording and storing the proceedings of such meetings along with date and time:*

Provided that the Central Government may, by notification, specify such matters which shall not be dealt with in a meeting through video conferencing or other audio visual means.

*(3) A meeting of the Board shall be called by giving not less than seven days' notice in writing to every director at his address registered with the company and such notice shall be sent by hand delivery or by post or by electronic means:*

Provided that a meeting of the Board may be called at shorter notice to transact urgent business subject to the condition that at least one independent director, if any, shall be present at the meeting:

Provided further that in case of absence of independent directors from such a meeting of the Board, decisions taken at such a meeting shall be circulated to all the directors and shall be final only on ratification thereof by at least one independent director, if any.

# Back up

## **Section 173- Meetings of Board.....Contd.**

*(4) Every officer of the company whose duty is to give notice under this section and who fails to do so shall be liable to a penalty of twenty-five thousand rupees.*

*(5) A One Person Company, small company and dormant company shall be deemed to have complied with the provisions of this section if at least one meeting of the Board of Directors has been conducted in each half of a calendar year and the gap between the two meetings is not less than ninety days:*

Provided that nothing contained in this sub-section and in section 174 shall apply to One Person Company in which there is only one director on its Board of Directors.

# Back up

## Section 174- Quorum for meetings of Board

**(1) *The quorum for a meeting of the Board of Directors of a company shall be one third*** of its total strength or two directors, whichever is higher, and the participation of the directors by video conferencing or by other audio visual means shall also be counted for the purposes of quorum under this sub-section.

**(2) *The continuing directors may act notwithstanding any vacancy in the Board; but, if and so long as their number is reduced below the quorum fixed by the Act for a meeting of the Board, the continuing directors or director may act for the purpose of increasing the number of directors to that fixed for the quorum, or of summoning a general meeting of the company and for no other purpose.***

**(3) *Where 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 directors and present at the meeting, being not less than two, shall be the quorum during such time.***

*Explanation.—For the purposes of this sub-section, “interested director” means a director within the meaning of sub-section (2) of section 184.*

**(4) *Where a meeting of the Board could not be held for want of quorum, then, unless the articles of the company otherwise provide, the meeting shall automatically stand adjourned to the same day at the same time and place in the next week or if that day is a national holiday, till the next succeeding day, which is not a national holiday, at the same time and place.***

*Explanation.—For the purposes of this section,—*

*(i) any fraction of a number shall be rounded off as one;*

*(ii) “total strength” shall not include directors whose places are vacant.*

# Back up

## **Section 175- Passing of resolution by circulation**

*(1) No resolution shall be deemed to have been duly passed by the Board or by a committee thereof by circulation, unless the resolution has been circulated in draft, together with the necessary papers, if any, to all the directors, or members of the committee, as the case may be, at their addresses registered with the company in India by hand delivery or by post or by courier, or through such electronic means as may be prescribed and has been approved by a majority of the directors or members, who are entitled to vote on the resolution:*

Provided that, where not less than one-third of the total number of directors of the company for the time being require that any resolution under circulation must be decided at a meeting, the chairperson shall put the resolution to be decided at a meeting of the Board.

*(2) A resolution under sub-section (1) shall be noted at a subsequent meeting of the Board or the committee thereof, as the case may be, and made part of the minutes of such meeting.*

# Back up

## **Section 176- Defects in appointment of directors not to invalidate actions taken**

No act done by a person as a director shall be deemed to be invalid, notwithstanding that it was subsequently noticed that his appointment was invalid by reason of any defect or disqualification or had terminated by virtue of any provision contained in this Act or in the articles of the company.

Provided that nothing in this section shall be deemed to give validity to any act done by the director after his appointment has been noticed by the company to be invalid or to have terminated.

# Back up

## Section 177- Audit Committee

(1) *The Board of Directors of every listed company and such other class or classes of companies, as may be prescribed, shall constitute an Audit Committee.*

(2) *The Audit Committee shall consist of a minimum of three directors with independent directors forming a majority: Provided that majority of members of Audit Committee including its Chairperson shall be persons with ability to read and understand, the financial statement.*

(3) *Every Audit Committee of a company existing immediately before the commencement of this Act shall, within one year of such commencement, be reconstituted in accordance with sub-section (2).*

(4) *Every Audit Committee shall act in accordance with the terms of reference specified in writing by the Board which shall, inter alia, include,—*

- (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.*

# Back up

## Section 177- Audit Committee.....Contd.

(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 shall have authority to investigate into any matter in relation to the items specified in sub-section (4) or referred to it by the Board and for this purpose shall have power to obtain professional advice from external sources and have full access to information contained in the records of the company.*

(7) *The auditors of a company and the key managerial personnel shall have a right to be heard in the meetings of the Audit Committee when it considers the auditor's report but shall not have the right to vote.*

(8) *The Board's report under sub-section (3) of section 134 shall disclose the composition of an Audit Committee and where the Board had not accepted any recommendation of the Audit Committee, the same shall be disclosed in such report along with the reasons therefor.*

(9) Every listed company or such class or classes of companies, as may be prescribed, shall establish a vigil mechanism for directors and employees to report genuine concerns in such manner as may be prescribed.

(10) The vigil mechanism under sub-section (9) shall provide for adequate safeguards against victimisation of persons who use such mechanism and make provision for direct access to the chairperson of the Audit Committee in appropriate or exceptional cases.

Provided that the details of establishment of such mechanism shall be disclosed by the company on its website, if any, and in the Board's report.



# Back up

## **Section 178- Nomination and Remuneration Committee / Stakeholders Relationship Committee**

*(1) The Board of Directors of every listed company and such other class or classes of companies, as may be prescribed shall constitute the **Nomination and Remuneration Committee** consisting of three or more non-executive directors out of which not less than one-half shall be independent directors:*

Provided that the chairperson of the company (whether executive or non-executive) may be appointed as a member of the Nomination and Remuneration Committee but shall not chair such Committee.

*(2) The Nomination and Remuneration Committee shall identify persons who are qualified to become directors and who may be appointed in senior management in accordance with the criteria laid down, recommend to the Board their appointment and removal and shall carry out evaluation of every director's performance.*

*(3) The Nomination and Remuneration Committee shall formulate the criteria for determining qualifications, positive attributes and independence of a director and recommend to the Board a policy, relating to the remuneration for the directors, key managerial personnel and other employees.*

*(4) 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.

# Back up

## Section 178- Nomination and Remuneration Committee / Stakeholders Relationship Committee.....Contd.

(5) The Board of Directors of a company which consists of more than one thousand shareholders, debenture-holders, deposit-holders and any other security holders at any time during a financial year shall 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.

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

(7) 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.

(8) In case of any contravention of the provisions of section 177 and this section, the company shall be punishable with fine which shall not be less than one lakh rupees but which may extend to 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 one year or with fine which shall not be less than twenty-five thousand rupees but which may extend to one lakh rupees, or with both:

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

*Explanation.*—The expression “senior management” means personnel of the company who are members of its core management team excluding Board of Directors comprising all members of management one level below the executive directors, including the functional heads.

# Back up

## Section 179- Powers of Board

*(1) The Board of Directors of a company shall be entitled to exercise all such powers, and to do all such acts and things, as the company is authorised to exercise and do:*

Provided that in exercising such power or doing such act or thing, the Board shall be subject to the provisions contained in that behalf in this Act, or in the memorandum or articles, or in any regulations not inconsistent therewith and duly made thereunder, including regulations made by the company in general meeting:

Provided further that the Board shall not exercise any power or do any act or thing which is directed or required, whether under this Act or by the memorandum or articles of the company or otherwise, to be exercised or done by the company in general meeting.

*(2) No regulation made by the company in general meeting shall invalidate any prior act of the Board which would have been valid if that regulation had not been made.*

*(3) The Board of Directors of a company shall exercise the following powers on behalf of the company by means of resolutions passed at meetings of the Board, namely:—*

- (a) to make calls on shareholders in respect of money unpaid on their shares;*
- (b) to authorise buy-back of securities under section 68;*
- (c) to issue securities, including debentures, whether in or outside India;*
- (d) to borrow monies;*
- (e) to invest the funds of the company;*

# Back up

## **Section 179- Powers of Board.....Contd.**

- (f) to grant loans or give guarantee or provide security in respect of loans;
- (g) to approve financial statement and the Board's report;
- (h) to diversify the business of the company;
- (i) to approve amalgamation, merger or reconstruction;
- (j) to take over a company or acquire a controlling or substantial stake in another company;
- (k) any other matter which may be prescribed:

Provided that 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 clauses (d) to (f) on such conditions as it may specify:

Provided further that the acceptance by a banking company in the ordinary course of its business of deposits of money from the public repayable on demand or otherwise and withdrawable by cheque, draft, order or otherwise, or the placing of monies on deposit by a banking company with another banking company on such conditions as the Board may prescribe, shall not be deemed to be a borrowing of monies or, as the case may be, a making of loans by a banking company within the meaning of this section.

# Back up

## **Section 180- Powers of Board.....Contd.**

*Explanation I.—Nothing in clause (d) shall apply to borrowings by a banking company from other banking companies or from the Reserve Bank of India, the State Bank of India or any other banks established by or under any Act.*

*Explanation II.—In respect of dealings between a company and its bankers, the exercise by the company of the power specified in clause (d) shall mean the arrangement made by the company with its bankers for the borrowing of money by way of overdraft or cash credit or otherwise and not the actual day-to-day operation on overdraft, cash credit or other accounts by means of which the arrangement so made is actually availed of.*

*(4) Nothing in this section shall be deemed to affect the right of the company in general meeting to impose restrictions and conditions on the exercise by the Board of any of the powers specified in this section.*

# Back up

## **Section 180- Restrictions on Powers of Board**

*(1) The Board of Directors of a company shall exercise the following powers only with the consent of the company by a 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.*

*Explanation.—For the purposes of this clause,—*

*(i) “undertaking” shall mean an undertaking in which the investment of the company exceeds twenty per cent. of its net worth as per the audited balance sheet of the preceding financial year or an undertaking which generates twenty per cent. of the total income of the company during the previous financial year;*

*(ii) the expression “substantially the whole of the undertaking” in any financial year shall mean twenty per cent. or more of the value of the undertaking as per the audited balance sheet of the preceding financial year;*

*(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:*

Provided that the acceptance by a banking company, in the ordinary course of its business, of deposits of money from the public, repayable on demand or otherwise, and withdrawable by cheque, draft, order or otherwise, shall not be deemed to be a borrowing of monies by the banking company within the meaning of this clause.

# Back up

## **Section 180- Restrictions on Powers of Board.....Contd.**

*Explanation.—For the purposes of this clause, the expression “temporary loans” means loans repayable on demand or within six months from the date of the loan such as short-term, cash credit arrangements, the discounting of bills and the issue of other short-term loans of a seasonal character, but does not include loans raised for the purpose of financial expenditure of a capital nature;*

- (d) to remit, or give time for the repayment of, any debt due from a director.
- (2) Every special resolution passed by the company in general meeting in relation to the exercise of the powers referred to in clause (c) of sub-section (1) shall specify the total amount up to which monies may be borrowed by the Board of Directors.
- (3) Nothing contained in clause (a) of sub-section (1) shall affect—
  - (a) the title of a buyer or other person who buys or takes on lease any property, investment or undertaking as is referred to in that clause, in good faith; or
  - (b) the sale or lease of any property of the company where the ordinary business of the company consists of, or comprises, such selling or leasing.
- (4) Any special resolution passed by the company consenting to the transaction as is referred to in clause (a) of sub-section (1) may stipulate such conditions as may be specified in such resolution, including conditions regarding the use, disposal or investment of the sale proceeds which may result from the transactions:  
Provided that this sub-section shall not be deemed to authorise the company to effect any reduction in its capital except in accordance with the provisions contained in this Act.
- (5) No debt incurred by the company in excess of the limit imposed by clause (c) of sub-section (1) shall be valid or effectual, unless the lender proves that he advanced the loan in good faith and without knowledge that the limit imposed by that clause had been exceeded.

# Back up

## **Section 181- Contribution to *bonafide* and charitable funds, etc.**

The Board of Directors of a company may contribute to *bona fide charitable* and other funds:

Provided that prior permission of the company in general meeting shall be required for such contribution in case any amount the aggregate of which, in any financial year, exceed five per cent. of its average net profits for the three immediately preceding financial years.

## **Section 182- Prohibitions and restrictions regarding political contributions**

(1) Notwithstanding anything contained in any other provision of this Act, a company, other than a Government company and a company which has been in existence for less than three financial years, may contribute any amount directly or indirectly to any political party:

Provided that the amount referred to in sub-section (1) or, as the case may be, the aggregate of the amount which may be so contributed by the company in any financial year shall not exceed seven and a half per cent. of its average net profits during the three immediately preceding financial years:

Provided further that no such contribution shall be made by a company unless a resolution authorising the making of such contribution is passed at a meeting of the Board of Directors and such resolution shall, subject to the other provisions of this section, be deemed to be justification in law for the making and the acceptance of the contribution authorised by it.

(2) Without prejudice to the generality of the provisions of sub-section (1),—

(a) a donation or subscription or payment caused to be given by a company on its behalf or on its account to a person who, to its knowledge, is carrying on any activity which, at the time at which such donation or subscription or payment was given or made, can reasonably be regarded as likely to affect public support for a political party shall also be deemed to be contribution of the amount of such donation, subscription or payment to such person for a political purpose;



# Back up

## **Section 182- Prohibitions and restrictions regarding political contributions.....Contd.**

- (b) the amount of expenditure incurred, directly or indirectly, by a company on an advertisement in any publication, being a publication in the nature of a souvenir, brochure, tract, pamphlet or the like, shall also be deemed,—
- (i) where such publication is by or on behalf of a political party, to be a contribution of such amount to such political party, and
  - (ii) where such publication is not by or on behalf of, but for the advantage of a political party, to be a contribution for a political purpose.
- (3) Every company shall disclose in its profit and loss account any amount or amounts contributed by it to any political party during the financial year to which that account relates, giving particulars of the total amount contributed and the name of the party to which such amount has been contributed.
- (4) If a company makes any contribution in contravention of the provisions of this section, the company shall be punishable with fine which may extend to five times the amount so contributed and every officer of the company 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 the amount so contributed.

Explanation.—For the purposes of this section, “political party” means a political party registered under section 29A of the Representation of the People Act, 1951.

# Back up

## **Section 183- Power of Board and other persons to make contributions to national defence fund, etc.**

- (1) The Board of Directors of any company or any person or authority exercising the powers of the Board of Directors of a company, or of the company in general meeting, may, notwithstanding anything contained in sections 180, 181 and section 182 or any other provision of this Act or in the memorandum, articles or any other instrument relating to the company, contribute such amount as it thinks fit to the National Defence Fund or any other Fund approved by the Central Government for the purpose of national defence.
  
- (2) Every company shall disclose in its profits and loss account the total amount or amounts contributed by it to the Fund referred to in sub-section (1) during the financial year to which the amount relates.

# Back up

## **Section 184- Disclosure of interest by Director**

- (1) Every director shall at the first meeting of the Board in which he participates as a director and thereafter at the first meeting of the Board in every financial year or whenever there is any change in the disclosures already made, then at the first Board meeting held after such change, disclose his concern or interest in any company or companies or bodies corporate, firms, or other association of individuals which shall include the shareholding, in such manner as may be prescribed.
- (2) Every director of a company who is in any way, whether directly or indirectly, concerned or interested in a contract or arrangement or proposed contract or arrangement entered into or to be entered into—
  - (a) with a body corporate in which such director or such director in association with any other director, holds more than two per cent. shareholding of that body corporate, or is a promoter, manager, Chief Executive Officer of that body corporate; or
  - (b) with a firm or other entity in which, such director is a partner, owner or member, as the case may be, shall disclose the nature of his concern or interest at the meeting of the Board in which the contract or arrangement is discussed and shall not participate in such meeting:

Provided that where any director who is not so concerned or interested at the time of entering into such contract or arrangement, he shall, if he becomes concerned or interested after the contract or arrangement is entered into, disclose his concern or interest forthwith when he becomes concerned or interested or at the first meeting of the Board held after he becomes so concerned or interested.

- (3) A contract or arrangement entered into by the company without disclosure under sub-section (2) 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.

# Back up

## **Section 184- Disclosure of interest by Director.....Contd.**

- (4) If a director of the company contravenes the provisions of sub-section (1) or subsection (2), such director shall be punishable with imprisonment 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 with both.
- (5) Nothing in this section—
  - (a) shall be taken to prejudice the operation of any rule of law restricting a director of a company from having any concern or interest in any contract or arrangement with the company;
  - (b) shall apply to any contract or arrangement entered into or to be entered into between two companies where any of the directors of the one company or two or more of them together holds or hold not more than two per cent. of the paid-up share capital in the other company.

# Back up

## **Section 185- Loan to Directors, etc.**

- (1) Save as otherwise provided in this Act, no company shall, directly or indirectly, advance any loan, including any loan represented by a book debt, to any of its directors or to any other person in whom the director is interested or give any guarantee or provide any security in connection with any loan taken by him or such other person:

Provided that nothing contained in this sub-section shall apply to—

- (a) the giving of any loan to a managing or whole-time director—  
    (i) as a part of the conditions of service extended by the company to all its employees; or  
    (ii) pursuant to any scheme approved by the members by a special resolution; or
- (b) a company which in the ordinary course of its business provides loans or gives guarantees or securities for the due repayment of any loan and in respect of such loans an interest is charged at a rate not less than the bank rate declared by the Reserve Bank of India.

Explanation.—For the purposes of this section, the expression “to any other person in whom director is interested” means—

- (a) any director of the lending company, or of a company which is its holding company or any partner or relative of any such director;
- (b) any firm in which any such director or relative is a partner;
- (c) any private company of which any such director is a director or member;
- (d) any body corporate at a general meeting of which not less than twenty five per cent. of the total voting power may be exercised or controlled by any such director, or by two or more such directors, together; or
- (e) any body corporate, the Board of directors, managing director or manager, whereof is accustomed to act in accordance with the directions or instructions of the Board, or of any director or directors, of the lending company.
- (2) If any loan is advanced or a guarantee or security is given or provided in contravention of the provisions of sub-section (1), the company shall be punishable with fine which shall not be less than five lakh rupees but which may extend to twenty-five lakh rupees, and the director or the other person to whom any loan is advanced or guarantee or security is given or provided in connection with any loan taken by him or the other person, shall be punishable with imprisonment which may extend to six months or with fine which shall not be less than five lakh rupees but which may extend to twenty-five lakh rupees, or with both.

# Back up

## **Section 186-Loan and Investment by Company**

- (1) Without prejudice to the provisions contained in this Act, a company shall unless otherwise prescribed, make investment through not more than two layers of investment companies:

Provided that the provisions of this sub-section shall not affect,—

- (i) a company from acquiring any other company incorporated in a country outside India if such other company has investment subsidiaries beyond two layers as per the laws of such country;
- (ii) a subsidiary company from having any investment subsidiary for the purposes of meeting the requirements under any law or under any rule or regulation framed under any law for the time being in force.

- (2) No company shall directly or indirectly —

- (a) give any loan to any person or other body corporate;
- (b) give any guarantee or provide security in connection with a loan to any other body corporate or person; and
- (c) acquire by way of subscription, purchase or otherwise, the securities of any other body corporate, exceeding sixty per cent. of its paid-up share capital, free reserves and securities premium account or one hundred per cent. of its free reserves and securities premium account, whichever is more.

- (3) Where the giving of any loan or guarantee or providing any security or the acquisition under sub-section (2) exceeds the limits specified in that sub-section, prior approval by means of a special resolution passed at a general meeting shall be necessary.
- (4) The company shall disclose to the members in the financial statement the full particulars of the loans given, investment made or guarantee given or security provided and the purpose for which the loan or guarantee or security is proposed to be utilised by the recipient of the loan or guarantee or security.

# Back up

## **Section 186-Loan and Investment by Company.....Contd.**

- (5) No investment shall be made or loan or guarantee or security given by the company unless the resolution sanctioning it is passed at a meeting of the Board with the consent of all the directors present at the meeting and the prior approval of the public financial institution concerned where any term loan is subsisting, is obtained:

Provided that prior approval of a public financial institution shall not be required where the aggregate of the loans and investments so far made, the amount for which guarantee or security so far provided to or in all other bodies corporate, along with the investments, loans, guarantee or security proposed to be made or given does not exceed the limit as specified in sub-section (2), and there is no default in repayment of loan instalments or payment of interest thereon as per the terms and conditions of such loan to the public financial institution.

- (6) No company, which is registered under section 12 of the Securities and Exchange Board of India Act, 1992 and covered under such class or classes of companies as may be prescribed, shall take inter-corporate loan or deposits exceeding the prescribed limit and such company shall furnish in its financial statement the details of the loan or deposits.
- (7) 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.
- (8) No company which is in default in the repayment of any deposits accepted before or after the commencement of this Act or in payment of interest thereon, shall give any loan or give any guarantee or provide any security or make an acquisition till such default is subsisting.
- (9) Every company giving loan or giving a guarantee or providing security or making an acquisition under this section shall keep a register which shall contain such particulars and shall be maintained in such manner as may be prescribed.

# Back up

## **Section 186-Loan and Investment by Company....Contd.**

- (10) The register referred to in sub-section (9) shall be kept at the registered office of the company and —
- (a) shall be open to inspection at such office; and
  - (b) extracts may be taken there from by any member, and copies thereof may be furnished to any member of the company on payment of such fees as may be prescribed.
- (11) Nothing contained in this section, except sub-section (1), shall apply—
- (a) to a loan made, guarantee given or security provided by a banking company or an insurance company or a housing finance company in the ordinary course of its business or a company engaged in the business of financing of companies or of providing infrastructural facilities;
  - (b) to any acquisition—
    - (i) made by a non-banking financial company registered under Chapter IIIB of the Reserve Bank of India Act, 1934 and whose principal business is acquisition of securities:  
Provided that exemption to non-banking financial company shall be in respect of its investment and lending activities;
    - (ii) made by a company whose principal business is the acquisition of securities;
    - (iii) of shares allotted in pursuance of clause (a) of sub-section (1) of section 62.
- (12) The Central Government may make rules for the purposes of this section.
- (13) If a company contravenes the provisions 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 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 two years and with fine which shall not be less than twenty-five thousand rupees but which may extend to one lakh rupees.

Explanation.—For the purposes of this section,—

- (a) the expression “investment company” means a company whose principal business is the acquisition of shares, debentures or other securities;
- (b) the expression “infrastructure facilities” means the facilities specified in Schedule VI.



# Back up

## **Section 188- Related Party Transactions**

- (1) Except with the consent of the Board of Directors given by a resolution at a meeting of the Board and subject to such conditions as may be prescribed, no company shall enter into any contract or arrangement with a related party with respect to—
- (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 company:

Provided that no contract or arrangement, in the case of a company having a paid-up share capital of not less than such amount, or transactions not exceeding such sums, as may be prescribed, shall be entered into except with the prior approval of the company by a special resolution:

Provided further that no member of the company shall vote on such special resolution, to approve any contract or arrangement which may be entered into by the company, if such member is a related party:

Provided also that nothing in this sub-section shall apply to any transactions entered into by the company in its ordinary course of business other than transactions which are not on an arm's length basis.

Explanation.— In this sub-section,—

- (a) the expression “office or place of profit” means any office or place—
- (i) where such office or place is held by a director, if the director holding it receives from the company anything by way of remuneration over and above the remuneration to which he is entitled as director, by way of salary, fee, commission, perquisites, any rent-free accommodation, or otherwise;

# Back up

## **Section 188- Related Party Transactions.....Contd.**

- (ii) where such office or place is held by an individual other than a director or by any firm, private company or other body corporate, if the individual, firm, private company or body corporate holding it receives from the company anything by way of remuneration, salary, fee, commission, perquisites, any rent-free accommodation, or otherwise;
- (b) the expression “arm’s length transaction” means a transaction between two related parties that is conducted as if they were unrelated, so that there is no conflict of interest.
- (2) Every contract or arrangement entered into under sub-section (1) shall be referred to in the Board’s report to the shareholders along with the justification for entering into such contract or arrangement.
- (3) 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 if it is not ratified by the Board or, as the case may be, 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.
- (4) Without prejudice to anything contained in sub-section (3), 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.
- (5) Any director or any other employee of a company, who had entered into or authorised the contract or arrangement in violation of the provisions of this section shall,—
  - (i) in case of listed company, be punishable with imprisonment for a term which may extend to one year or with fine which shall not be less than twenty-five thousand rupees but which may extend to five lakh rupees, or with both; and
  - (ii) in case of any other company, be punishable with fine which shall not be less than twenty-five thousand rupees but which may extend to five lakh rupees.

# Back up

## **Section 189- Register of contracts / arrangements in which Directors are interested**

- (1) Every company shall keep one or more registers giving separately the particulars of all contracts or arrangements to which sub-section (2) of section 184 or section 188 applies, in such manner and containing such particulars as may be prescribed and after entering the particulars, such register or registers shall be placed before the next meeting of the Board and signed by all the directors present at the meeting.
- (2) Every director or key managerial personnel shall, within a period of thirty days of his appointment, or relinquishment of his office, as the case may be, disclose to the company the particulars specified in sub-section (1) of section 184 relating to his concern or interest in the other associations which are required to be included in the register under that sub-section or such other information relating to himself as may be prescribed.
- (3) The register referred to in sub-section (1) shall be kept at the registered office of the company and it shall be open for inspection at such office during business hours and extracts may be taken therefrom, and copies thereof as may be required by any member of the company shall be furnished by the company to such extent, in such manner, and on payment of such fees as may be prescribed.
- (4) The register to be kept under this section shall also be produced at the commencement of every annual general meeting of the company and shall remain open and accessible during the continuance of the meeting to any person having the right to attend the meeting.
- (5) Nothing contained in sub-section (1) shall apply to any contract or arrangement—
  - (a) for the sale, purchase or supply of any goods, materials or services if the value of such goods and materials or the cost of such services does not exceed five lakh rupees in the aggregate in any year; or
  - (b) by a banking company for the collection of bills in the ordinary course of its business.
- (6) Every director who fails to comply with the provisions of this section and the rules made thereunder shall be liable to a penalty of twenty-five thousand rupees.

# Back up

## **Section 190- Contract of employment with MD/WTD**

- (1) Every company shall keep at its registered office,—
  - (a) where a contract of service with a managing or whole-time director is in writing, a copy of the contract; or
  - (b) where such a contract is not in writing, a written memorandum setting out its terms.
- (2) The copies of the contract or the memorandum kept under sub-section (1) shall be open to inspection by any member of the company without payment of fee.
- (3) If any default is made in complying with the provisions of sub-section (1) or sub-section (2), the company shall be liable to a penalty of twenty-five thousand rupees and every officer of the company who is in default shall be liable to a penalty of five thousand rupees for each default.
- (4) The provisions of this section shall not apply to a private company.

## **Section 191- Payment to director for loss of office, etc., in connection with transfer of undertaking, property or shares**

- (1) No director of a company shall, in connection with—
  - (a) the transfer of the whole or any part of any undertaking or property of the company; or
  - (b) the transfer to any person of all or any of the shares in a company being a transfer resulting from—
    - (i) an offer made to the general body of shareholders;
    - (ii) an offer made by or on behalf of some other body corporate with a view to a company becoming a subsidiary company of such body corporate or a subsidiary company of its holding company;
    - (iii) an offer made by or on behalf of an individual with a view to his obtaining the right to exercise, or control the exercise of, not less than one-third of the total voting power at any general meeting of the company; or

# Back up

## **Section 191- Payment to director for loss of office, etc., in connection with transfer of undertaking, property or shares.....Contd.**

- (iv) any other offer which is conditional on acceptance to a given extent, receive any payment by way of compensation for loss of office or as consideration for retirement from office, or in connection with such loss or retirement from such company or from the transferee of such undertaking or property, or from the transferees of shares or from any other person, not being such company, unless particulars as may be prescribed with respect to the payment proposed to be made by such transferee or person, including the amount thereof, have been disclosed to the members of the company and the proposal has been approved by the company in general meeting.
- (2) Nothing in sub-section (1) shall affect any payment made by a company to a managing director or whole-time director or manager of the company by way of compensation for loss of office or as consideration for retirement from office or in connection with such loss or retirement subject to limits or priorities, as may be prescribed.
- (3) If the payment under sub-section (1) or sub-section (2) 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.
- (4) Where 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.
- (5) If a director of the company contravenes the provisions of this section, such director shall be punishable with fine which shall not be less than twenty-five thousand rupees but which may extend to one lakh rupees.
- (6) Nothing in this section shall be taken to prejudice the operation of any law requiring disclosure to be made with respect to any payment received under this section or such other like payments made to a director.

# Back up

## **Section 192- Restriction on non-cash transactions involving directors**

- (1) No company shall enter into an arrangement 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, unless 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 under this sub-section shall also be required to be obtained by passing a resolution in general meeting of the holding company.
- (2) The notice for approval of the resolution by the company or holding company in general meeting under sub-section (1) shall include the particulars of the arrangement along with the value of the assets involved in such arrangement duly calculated by a registered valuer.
- (3) 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 unless—
  - (a) 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
  - (b) any rights are acquired bona fide for value and without notice of the contravention of the provisions of this section by any other person.

# Back up

## **Section 194- Prohibition on forward dealings in securities by director or KMP**

- (1) No director of a company or any of its key managerial personnel shall buy 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.
- (2) If a director or any key managerial personnel of the company contravenes the provisions of sub-section (1), 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.
- (3) Where a director or other key managerial personnel acquires any securities in contravention of sub-section (1), he shall, subject to the provisions contained in sub-section (2), be 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.

Explanation.—For the purposes of this section, “relevant shares” and “relevant debentures” mean shares and debentures of the company in which the concerned person is a whole-time director or other key managerial personnel or shares and debentures of its holding and subsidiary companies.

# Back up

## **Section 195- Prohibition on insider trading of securities**

(1) No person including any director or key managerial personnel of a company shall enter into insider trading:

Provided that nothing contained in this sub-section shall apply to any communication required in the ordinary course of business or profession or employment or under any law.

Explanation.—For the purposes of this section,—

(a) “insider trading” means—

- (i) 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
- (ii) an act of counselling about procuring or communicating directly or indirectly any non-public price-sensitive information to any person;

(b) “price-sensitive information” means any information which relates, directly or indirectly, to a company and which if published is likely to materially affect the price of securities of the company.

(2) 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.



# Back up

## The Companies (Meetings of Board and its Powers) Rules, 2014

### MINISTRY OF CORPORATE AFFAIRS NOTIFICATION

New Delhi, the 31st March, 2014

**G.S.R. 240 (E).**—In exercise of powers conferred under sections 173, 175, 177, 178, 179, 184, 185, 186, 187, 188, 189 and section 191 read with section 469 of the Companies Act, 2013 and in supersession of the Companies (Central Government's) General Rules and Forms, 1956 or any other Rules prescribed under the Companies Act, 1956 on matters covered under these rules, except as respects things done or omitted to be done before such suppression, the Central Government hereby makes the following rules, namely:—

#### **1. (1) Short title and commencement.-**

- (1) These rules may be called the Companies (Meetings of Board and its Powers) Rules, 2014.
- (2) They shall come into force on the **1st day of April, 2014.**

#### **2. Definitions.**-(1) In these rules, unless the context otherwise requires,—

- (a) “Act” means the Companies Act, 2013;
- (b) “Annexure” means the Annexure appended to these rules;
- (c) “Fees” means the fees as specified in the Companies (Registration Offices and Fees) Rules, 2014

# Back up

## The Companies (Meetings of Board and its Powers) Rules, 2014.....Contd.

(d) “Form” or “e-Form” means a form set forth in Annexure to these rules which shall be used for the matter to which it relates;

(e) “section” means the section of the Act.

(2) Words and expressions used in these rules but not defined and defined in the Act or in the Companies (Specification of Definitions Details) Rules, 2014, shall have the same meanings respectively assigned to them in the Act or in the said Rules.

### **3. Meetings of Board through video conferencing or other audio visual means.-**

A company shall comply with the following procedure, for convening and conducting the 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;

# Back up

## **The Companies (Meetings of Board and its Powers) Rules, 2014.....Contd.**

(b) to ensure 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 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:

Provided that the persons, who are differently abled, may make request to the Board to allow a person to accompany him.

(3) (a) The notice 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.

# Back up

## **The Companies (Meetings of Board and its Powers) Rules, 2014.....Contd.**

(c) A director intending to participate through video conferencing or audio visual means shall communicate his intention to the Chairperson 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 arrangements 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 intimation under clause (c), it shall be assumed that the director shall 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 has received the agenda and all the relevant material for the meeting; and

(d) that no one other than the concerned director is attending or having access to the proceedings of the meeting at the location mentioned in clause (b);

# Back up

## **The Companies (Meetings of Board and its Powers) Rules, 2014.....Contd.**

(5) (a) After the roll call, the Chairperson or the Company 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 Chairperson and confirm that the required quorum is complete.

*Explanation.- 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 Chairperson shall ensure that the required quorum is present 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.

# Back up

## **The Companies (Meetings of Board and its Powers) Rules, 2014.....Contd.**

(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 and until the conclusion of such meeting, no person other than the Chairperson, Directors, Company 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, who 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.

# Back up

## **The Companies (Meetings of Board and its Powers) Rules, 2014.....Contd.**

(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 in writing, 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.*

# Back up

## The Companies (Meetings of Board and its Powers) Rules, 2014.....Contd.

### **4. Matters not to be dealt with in a meeting through video conferencing or other audio visual means.-**

(1) The following matters 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.

### **5. Passing of resolution by circulation.-**

A resolution in draft form may be circulated to the directors together with the necessary papers for seeking their approval, by electronic means which may include E-mail or fax.

### **6. Committees of the Board.-**

The Board of directors of every listed companies and the following classes of companies shall constitute an Audit Committee and a Nomination and Remuneration Committee of the Board-

- (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.*



# Back up

## The Companies (Meetings of Board and its Powers) Rules, 2014.....Contd.

### **7. Establishment of vigil mechanism.-**

(1) 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 their genuine concerns or grievances-

(a) the Companies which accept deposits from the public;

(b) the Companies which have borrowed money from banks and public financial institutions in excess of fifty crore rupees.

(2) 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 conflict of interest in a given case, they should recuse themselves and the others on the committee would deal with the matter on hand.

(3) 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.

(4) The vigil mechanism shall provide for adequate safeguards against victimisation 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.

(5) 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.

# Back up

## The Companies (Meetings of Board and its Powers) Rules, 2014.....Contd.

### **8. Powers of Board.-**

In addition to the powers specified under sub-section (3) of section 179 of the Act, the following powers shall also be exercised by the Board of Directors only by means of resolutions passed at meetings of the Board.-

- (1) to make political contributions;
- (2) to appoint or remove key managerial personnel (KMP);
- (3) to take note of appointment(s) or removal(s) of one level below the Key Management Personnel;
- (4) to appoint internal auditors and secretarial auditor;
- (5) to take note of the disclosure of director's interest and shareholding;
- (6) 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;
- (7) to invite or accept or renew public deposits and related matters;
- (8) to review or change the terms and conditions of public deposit;
- (9) to approve quarterly, half yearly and annual financial statements or financial results as the case may be.

# Back up

## The Companies (Meetings of Board and its Powers) Rules, 2014.....Contd.

### **9. Disclosures by a director of his interest.-**

(1) Every director shall disclose his concern or interest in any company or companies or bodies corporate (including shareholding interest), firms or other association of individuals, by giving a notice in writing in Form MBP 1.

(2) 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.

(3) 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 authorised by the Board for the purpose.

### **10. Loans to Director etc. under section 185.-**

(1) 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

(2) 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 made under sub-rule(1) and (2) are utilised by the subsidiary company for its principle business activities.

# Back up

## The Companies (Meetings of Board and its Powers) Rules, 2014.....Contd.

### **11. Loan and investment by a company under section 186 of the Act.-**

(1) Where a loan or guarantee is given or where a security has been provided by a company to its wholly owned subsidiary company or a joint venture company, or acquisition is made by a holding company, by way of subscription, purchase or otherwise of, the securities of its wholly owned subsidiary company, the requirement of sub-section (3) of section 186 shall not apply:

Provided that the company shall disclose the details of such loans or guarantee or security or acquisition in the financial statement as provided under sub-section (4) of section 186.

(2) For the purposes of clause (a) of sub-section (11) of section 186, the expression “business of financing of companies” shall include, with regard to a Non-Banking Financial Company registered with the Reserve Bank of India, “business of giving of any loan to a person or providing any guaranty or security for due repayment of any loan availed by any person in the ordinary course of its business”.

(3) 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.

# Back up

## The Companies (Meetings of Board and its Powers) Rules, 2014.....Contd.

### **12.Register.-**

(1) 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.

(2) 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.

(3) 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.

(4) The entries in the register (either manual or electronic) shall be authenticated by the company secretary of the company or by any other person authorised by the Board for the purpose.

(5) For the purpose of sub-rule (4), the register can be maintained either manually or in electronic mode.

(6) The extracts from the register maintained under sub-section (9) of section 186 may be furnished to any member of the company on payment of such fee as may be prescribed in the Articles of the company which shall not exceed ten rupees for each page.

# Back up

## The Companies (Meetings of Board and its Powers) Rules, 2014.....Contd.

### **13. Special Resolution.-**

(1) 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.

*Explanation.- For the purpose of this sub-rule, it is clarified that it would sufficient compliance if such special resolution is passed within one year from the date of notification of this section.*

(2) 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.

# Back up

## The Companies (Meetings of Board and its Powers) Rules, 2014.....Contd.

### **14. Investments of company to be held in its own name.-**

(1) Every company shall, from the date of its registration, maintain a register in Form MBP3 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.

(2) The company shall also record whether such investments are held in a third party's name for the time being or otherwise.

(3) 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.

(4) The entries in the register shall be authenticated by the company secretary of the company or by any other person authorised by the Board for the purpose.

# Back up

## The Companies (Meetings of Board and its Powers) Rules, 2014.....Contd.

### **15. Contract or arrangement with a related party.-**

A company shall enter into any contract or arrangement with a related party subject to the following conditions, namely:-

(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-



# Back up

## **The Companies (Meetings of Board and its Powers) Rules, 2014.....Contd.**

(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;

# Back up

## **The Companies (Meetings of Board and its Powers) Rules, 2014.....Contd.**

(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.

*Explanation.- (1) The Turnover or Net Worth referred in the above sub-rules shall be on the basis of the Audited Financial Statement of the preceding Financial year.*

(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.

# Back up

## The Companies (Meetings of Board and its Powers) Rules, 2014.....Contd.

### **16. Register of contracts or arrangements in which directors are interested.—**

(1) Every company shall maintain one or more registers in Form MBP 4, and shall enter therein the particulars of—

(a) company or companies or bodies corporate, firms or other association of individuals, in which any director has any concern or interest, as mentioned under sub-section (1) of section 184:

Provided that 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.

(2) 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 authorised by the Board for the purpose.

(3) 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.

(4) 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.

# Back up

## The Companies (Meetings of Board and its Powers) Rules, 2014.....Contd.

### **17. Payment to director for loss of office, etc. in connection with transfer of undertaking, property or shares.—**

(1) No director of a company shall receive any payment by way of compensation in connection with any event mentioned in sub-section (1) of section 191 unless the following particulars are 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 or 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.

(2) Any payment made by a company by way of compensation for the loss of office or as a consideration for retirement from office or in connection with such loss or retirement, to a managing director or whole time director or manager of the company shall not exceed the limit as set out under section 202.

# Back up

## **The Companies (Meetings of Board and its Powers) Rules, 2014.....Contd.**

(3) 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 (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.

*Explanation:* Pending notification of sub-section (1) of section 247 of the Act and finalisation of qualifications and experience of valuers, valuation of stocks, shares, debentures, securities etc. will be conducted by an independent merchant banker who is registered with the Securities and Exchange Board of India or an independent chartered accountant in practice having a minimum experience of ten years.

# Back up

## The Companies (Meetings of Board and its Powers) Rules, 2014.....Contd.

### FORM MBP - 1

#### **Notice of interest by Director**

*[Pursuant to Section 184 (1) and Rule 9(1)]*

To  
The Board of Directors  
.....Limited

**Dear Sir(s)**

I, ....., son/daughter/spouse of ....., resident of ....., being a director in the company hereby give notice of my interest or concern in the following company or companies, bodies corporate, firms or other association of individuals:-

Sl . No.	Names of the Companies/bodies corporate/firms/Association of Individuals	Nature of interest or concern / Change in interest or concern	Shareholding	Date on which interest or concern arose / changes

Signature:  
MD/Director/Secretary/Whole time Director

Date:  
Place:

# Back up

## **One Person Company (OPC) – Section 2(62)**

“One Person Company” means a company which has only one person as a member

## **Small Company – Section 2(85)**

“Small Company” means a Company, other than a Public Company—

- (i) paid-up share capital of which does not exceed fifty lakh rupees or such higher amount as may be prescribed which shall not be more than five crore rupees; **or**
- (ii) turnover of which as per its last profit and loss account does not exceed two crore rupees or such higher amount as may be prescribed which shall not be more than twenty crore rupees:

Provided that nothing in this clause shall apply to—

- (A) a holding company or a subsidiary company;
- (B) a company registered under section 8; or
- (C) a company or body corporate governed by any special Act;

# Back up

## **Dormant Company- Section 455**

- (1) Where a company is formed and registered under this Act for a future project or to hold an asset or intellectual property and has no significant accounting transaction, such a company or an inactive company may make an application to the Registrar in such manner as may be prescribed for obtaining the status of a dormant company.

Explanation.—For the purposes of this section,—

- (i) “inactive company” means a company which has not been carrying on any business or operation, or has not made any significant accounting transaction during the last two financial years, or has not filed financial statements and annual returns during the last two financial years;
- (ii) “significant accounting transaction” means any transaction other than—
  - (a) payment of fees by a company to the Registrar;
  - (b) payments made by it to fulfil the requirements of this Act or any other law;
  - (c) allotment of shares to fulfil the requirements of this Act; and
  - (d) payments for maintenance of its office and records.
- (2) The Registrar on consideration of the application shall allow the status of a dormant company to the applicant and issue a certificate in such form as may be prescribed to that effect.
- (3) The Registrar shall maintain a register of dormant companies in such form as may be prescribed.
- (4) In case of a company which has not filed financial statements or annual returns for two financial years consecutively, the Registrar shall issue a notice to that company and enter the name of such company in the register maintained for dormant companies.
- (5) A dormant company shall have such minimum number of directors, file such documents and pay such annual fee as may be prescribed to the Registrar to retain its dormant status in the register and may become an active company on an application made in this behalf accompanied by such documents and fee as may be prescribed.
- (6) The Registrar shall strike off the name of a dormant company from the register of dormant companies, which has failed to comply with the requirements of this section.



# Back up

## Evaluation of Performance of Directors

### A. Section 134(3)(p)

**134(3)** There shall be attached to statements laid before a Company in general meeting, a report by its Board of Directors, which shall include—

- (p) in case of a listed company and every other public company having such paid-up share capital as may be prescribed, a statement indicating the manner in which formal annual evaluation has been made by the Board of its own performance and that of its committees and individual directors;

### B. Section 178(2)

The Nomination and Remuneration Committee shall identify persons who are qualified to become directors and who may be appointed in senior management in accordance with the criteria laid down, recommend to the Board their appointment and removal and shall carry out evaluation of every director's performance.

### C. Schedule IV

#### **VII. Separate meetings:**

- (1) The independent directors of the company shall hold at least one meeting in a year, without the attendance of non-independent directors and members of management;
- (2) All the independent directors of the company shall strive to be present at such meeting;
- (3) The meeting shall:
  - (a) review the performance of non-independent directors and the Board as a whole;
  - (b) review the performance of the Chairperson of the company, taking into account the views of executive directors and non-executive directors;
  - (c) assess the quality, quantity and timeliness of flow of information between the company management and the Board that is necessary for the Board to effectively and reasonably perform their duties.

#### **VIII. Evaluation mechanism:**

- (1) The performance evaluation of independent directors shall be done by the entire Board of Directors, excluding the director being evaluated.
- (2) On the basis of the report of performance evaluation, it shall be determined whether to extend or continue the term of appointment of the independent director.

# Back up

**General Circular no. 04 /2014**

No. II32I20I3- CL V (ft. File)

Government of India

Ministry of Corporate Affairs  
5m Floor, 'A'Wing, Shastri Bhavan,  
Dr. R P Road, New Delhi-I10001.  
Dated:25103120L4

To

All Regional Directors,

All Registrar of Companies,

All the Stakeholders,

**Subject: Clarification with regard to section 180 of the Companies Act, 2013.**

Sir,

This Ministry has received many representations regarding various difficulties arising out of implementation of section 180 of the Companies Act, 2013 with reference to borrowings and/or creation of security, based on the basis of ordinary resolution. The matter has been examined in the Ministry and it is hereby clarified that the resolution passed under section 293 of the Companies Act, 1956 prior to 12.09.2013 with reference to borrowings (subject to the limits prescribed) and / or creation of security on assets of the company will be regarded as sufficient compliance of the requirements of section 180 of the Companies Act, 2013 for a period of one year from the date of notification of section 180 of the Act.

Yours faithfully,

Sd/-

Assistant Director (Policy)

Ph. no. 23387263

# Back up

Circular no 19/2013

No. 1712712013-CL-V  
Government of India  
Ministry of Corporate Affairs

Shastri Bhawan, 5th Floor 'A' Wing,  
Dr. Rajendra Prasad Road,  
New Delhi 110001  
Dated 10.12.2013

To  
All Registrar of Companies  
All Regional Director

**Sub:- Clarification with regard to applicability of section 182(3) of the Companies Act, 2013.**

Sir,

Ministry has received representations seeking clarification on disclosures to be made under section 182 of the companies Act, 2013. The same have been examined. with the coming into force of the scheme relating to 'Electoral Trust companies' in terms of section (24M) of the Income Tax Act, 1961 read with Ministry of Finance Notification No. s.o.309(E) dated 31st January, 2013 it will be expedient to explain the requirements of disclosure on part of a company of any amount or amounts contributed by it to any political parties under section 182(3) of the Companies Act, 2013. It is hereby clarified as under;

(i) Companies contributing any amount or amounts to an 'Electoral Trust Company' for contributing to a political party or parties are not required to make disclosures required under section 182(3) of Companies Act 2013. It will suffice if the Accounts of the company disclose the amount released to an Electoral Trust Company. (ii) Companies contributing any amount or amounts directly to a political party or parties will be required to make the disclosures laid down in section 192(3) of the Companies Act, 2013. (iii) Electoral Trust companies will be required to disclose all amounts received by them from other companies/sources in their Books of Accounts and also disclose the amount or amounts contributed by them to a political party or parties as required by section 182(3) of Companies Act, 2013. This issues with the approval of competent authority.

Yours Faithfully,

Sd/-

(Vinod Sharma)

Deputy Director