ICSI Events


- Appointment and Remuneration of Key Managerial Personnel
- Acceptance of Deposits
- Appointment and Qualifications of Directors

39th Regional Conference of Company Secretaries held on 18-19th July, 2014 at Kerala.

Inaugural Session: Sitting from L to R: CS C Ramasubramaniam, Secretary, ICSI - SIRC, CS M S Sahoo, Secretary, The ICSI, CS Dr. Baiju Ramachandran, Chairman, ICSI- SIRC, Shri B K Bansal, Regional Director, Southern Region, Ministry of Corporate Affairs, Chennai, CS Sridharan R, President, The ICSI, Shri Gopalkrishnan Iyer, Senior General Manager, Bombay Stock Exchange, Mumbai, CS Gopal Krishna Hegde, Council Member, The ICSI, CS C Sudhir Babu, Council Member, The ICSI


Sitting from L to R: CS M S Sahoo, Secretary, The ICSI, CS Dr. Baiju Ramachandran, Chairman, ICSI - SIRC, Shri B K Bansal, Regional Director, Southern Region, Ministry of Corporate Affairs, Chennai, Shri Gopalkrishnan Iyer, Senior General Manager, Bombay Stock Exchange, Mumbai, CS Gopal Krishna Hegde, Council Member, The ICSI, CS C Sudhir Babu, Council Member, The ICSI
Message from President

Dear Member,

In one of the earlier special issues of *e-CS Nitor*, we have included some of the articles, which were circulated at the 9th International Fellowship Programme held at Kuala Lumpur, Malaysia on 6th of this month. Now, we have included the remaining articles, in the special edition of *e-CS Nitor* which is sent herewith. These articles are contemporary in nature, pertaining to appointment and remuneration of KMP; acceptance of deposits and appointments and qualifications of directors and I am sure that you will find it interesting.

Two important programmes of the Institute have been scheduled in August 2014. ICSI Capital Markets Programme on the theme "Capital Market-The Growth Engine" in collaboration with BSE has been scheduled on 4th August 2014. Shri U K Sinha, Chairman, SEBI and Shri Asishkumar Chauhan, MD &CEO, BSE Limited, would be the Chief Guest and Guest of Honour respectively at this programme.

As regards, much awaiting event of the year – 42nd National Convention to be held on 21-22-23 August 2014, updates are being sent to the members from time to time. We have enlisted the support of eminent professionals, regulators and practitioners to handle the technical sessions and I am sure at this Convention, you will have a number of take-aways. I request the members to help and support to make this Convention a grand success.

Regards

CS R Sridharan
President

president@icsi.edu
The Council

President
R. Sridharan
Vice-President
Vikas Y. Khare

Members
(in alphabetical order)
Amardeep Singh Bhatia
Anil Murarka
Ardhendu Sen
Arun Balakrishnan
Ashok Kumar Pareek
Atul Hasmukhrai Mehta
Atul Mittal
B. Narasimhan
Gopalakrishna Hegde
Harish K. Vaid
Nesar Ahmad
P. Sesh Kumar
Pradeep Kumar Mittal
S. N. Ananthasubramanian
Sanjay Grover
Sudhir Babu C.
U. D. Choubey (Dr.)
Umesh Harjivandas Ved

Secretary
M. S. Sahoo

Chief Executive
Sutanu Sinha

Contents

- Message from the President
- Appointment and Remuneration of Key Managerial Personnel
- Acceptance of Deposits
- Appointment and Qualifications of Directors
- ICSI Capital Markets Programme on Capital Market- The Growth Engine
APPPOINTMENT AND REMUNERATION OF KEY MANAGERIAL PERSONNEL*

Introduction

The executive management of a company is responsible for the day to day management of a company. The Companies Act, 2013 has used the term key management personnel to define the executive management. The key management personnel are the point of first contact between the company and its stakeholders. While the Board of Directors are responsible for providing the oversight, it is the key management personnel who are responsible for not just laying down the strategies as well as its implementation.

Chapter XIII of the Companies Act, 2013 read with Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014 deal with the legal and procedural aspects of appointment of Key Managerial Personnel including Managing Director, Whole-time Director or Manager, managerial remuneration, secretarial audit etc.

Key Managerial Personnel

The Companies Act, 2013 has for the first time recognized the concept of Key Managerial Personnel. As per section 2(51) “key managerial personnel”, in relation to a company, means—

(i) the Chief Executive Officer or the managing director or the manager;
(ii) the company secretary;
(iii) the whole-time director;
(iv) the Chief Financial Officer; and
(v) such other officer as may be prescribed.

Managing Director

Section 2(54) of the Companies Act, 2013, defines ‘managing director’. It stipulates that a “managing director” means a director who, by virtue of the articles of a company or an agreement with the company or a resolution passed in its general meeting, or by its Board of Directors, is entrusted with substantial powers of management of the affairs of the company and includes a director occupying the position of managing director, by whatever name called.

The explanation to section 2(54) excludes administrative acts of a routine nature when so authorised by the Board such as the power to affix the common seal of the company to any document or to draw and endorse any cheque on the account of the company in any bank or to draw and endorse any negotiable instrument or to sign any certificate of share or to direct registration of transfer of any share, from the substantial powers of management.

Whole Time Director

Section 2 (94) of the Companies Act, 2013 defines “whole-time director” as a director in the whole-time employment of the company.

Manager

Section 2(53) of the Companies Act, 2013 defines “manager” as an individual who, subject to the superintendence, control and direction of the Board of Directors, has the management of the whole, or substantially the whole, of the affairs of a company, and includes a director or any other person occupying the position of a manager, by whatever name called, whether under a contract of service or not.

Topic for Discussion at Business Breakfast Session.

Contents

Reproduced from Souvenir of 9th International Conference held on July 06, 2014 at Malaysia. The views expressed in the discussion paper do not necessarily reflect those of the Institute.
Chief Executive Officer & Chief Financial Officer

Section 2(18)/(19) of the Companies Act, 2013 defined “Chief Executive Officer”/ “Chief Financial Officer” as an officer of a company, who has been designated as such by it;

Company Secretary

Section 2(24) of the Companies Act, 2013 defines “company secretary” or “secretary” means a company secretary as defined in clause (c) of sub-section (1) of section 2 of the Company Secretaries Act, 1980 who is appointed by a company to perform the functions of a company secretary under this Act;

Appointment of Managing Director, Whole-Time Director or Manager

Section 196 of the Companies Act, 2013 provides that no company shall appoint or employ at the same time a Managing Director and a Manager. Further, a company shall not appoint or reappoint any person as its Managing Director, Whole Time Director or manager for a term exceeding five years at a time and no reappointment shall be made earlier than one year before the expiry of his term.

Section 196(4) of the Companies Act, 2013 provides that subject to the provisions of section 197 and Schedule V, a managing director, whole-time director or manager shall be appointed and the terms and conditions of such appointment and remuneration payable be approved by the Board of Directors at a meeting which shall be subject to approval by a resolution at the next general meeting of the company and by the Central Government in case such appointment is at variance to the conditions specified in Schedule V. Approval of the Central Government is not necessary if the appointment is made in accordance with the conditions specified in Schedule V to the Act.

Therefore, the appointment of a managing director or whole-time director or manager and the terms and conditions of such appointment and remuneration payable thereon must be first approved by the Board of directors at a meeting and then by an ordinary resolution passed at a general meeting of the company.

A notice convening Board or general meeting for considering such appointment shall include the terms and conditions of such appointment, remuneration payable and such other matters including interest, of a director or directors in such appointments, if any.

A return in the prescribed form viz. MR.1 is required to be filed with Registrar within 60 days from the date of such appointment.

Section 196(5) provides that subject to the provisions of this Act, where an appointment of a managing director, whole-time director or manager is not approved by the company at a general meeting, any act done by him before such approval shall not be deemed to be invalid.

Appointment with the Approval of Central Government

In case the provisions of Schedule V of the Companies Act, 2013 are not fulfilled by company, an application seeking approval to the appointment of a managing director (Whole-time director or manager) shall be made to the Central Government, in e-Form No. MR.2.

As per section 200, the Central Government or a company may, while according its approval under section 196, to any appointment of a managing director, whole-time director or manager, the Central Government or the company shall have regard to—

(a) the financial position of the company;
(b) the remuneration or commission drawn by the individual concerned in any other capacity;
(c) the remuneration or commission drawn by him from any other company;
(d) professional qualifications and experience of the individual concerned;
(e) such other matters as may be prescribed.
As per Rule 6 for the purposes of item (e) of section 200, the Central Government or the company shall have regard to the following matters while granting approval to the appointment of managing director under section 196:

1. Financial and operating performance of the company during the three preceding financial years.
2. Relationship between remuneration and performance.
3. The principle of proportionality of remuneration within the company, ideally by a rating methodology which compares the remuneration of directors to that of other executive directors on the board and employees or executives of the company.
4. Whether remuneration policy for directors differs from remuneration policy for other employees and if so, an explanation for the difference.
5. The securities held by the director, including options and details of the shares pledged as at the end of the preceding financial year.

Disqualifications

Section 196(3) of the Act makes a specific prohibitory provision with regard to the appointment of managing director, whole time director or manager. The section lays down that no company shall appoint or continue the employment of any person as its managing director, whole time director or manager who—

(a) is below the age of twenty-one years or has attained the age of seventy years:

Provided that appointment of a person who has attained the age of seventy years may be made by passing a special resolution in which case the explanatory statement annexed to the notice for such motion shall indicate the justification for appointing such person;

(b) is an undischarged insolvent or has at anytime been adjudged as an insolvent;

(c) has at any time suspended payment to his creditors, or makes, or has at any time made, a composition with them; or

(d) has at any time been, convicted by a court of an offence and sentenced for a period of more than six months.

Apart from this, Part I of Schedule V contains five conditions which must be satisfied by a person to be eligible for appointment as managing director, whole-time director or manager without the approval of the Central Government. These conditions are as below:

(a) he had not been sentenced to imprisonment for any period, or to a fine exceeding one thousand rupees, for the conviction of an offence under any of the following Acts, namely:-

   (i) the Indian Stamp Act, 1899,
   (ii) the Central Excise Act, 1944,
   (iii) the Industries (Development and Regulation) Act, 1951,
   (iv) the Prevention of Food Adulteration Act, 1954,
   (v) the Essential Commodities Act, 1955,
   (vi) the Companies Act, 2013,
   (vii) the Securities Contracts (Regulation) Act, 1956,
   (viii) the Wealth-tax Act, 1957,
   (ix) the Income-tax Act, 1961,
   (x) the Customs Act, 1962,
(xi) the Competition Act, 2002,
(xii) the Foreign Exchange Management Act, 1999,
(xiii) the Sick Industrial Companies (Special Provisions) Act, 1985,
(xiv) the Securities and Exchange Board of India Act, 1992,
(xv) the Foreign Trade (Development and Regulation) Act, 1992;
(xvi) the Prevention of Money Laundering Act, 2002;

(b) he had not been detained for any period under the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974;

Provided that where the Central Government has given its approval to the appointment of a person convicted or detained under sub-paragraph (a) or sub-paragraph (b), as the case may be, no further approval of the Central Government shall be necessary for the subsequent appointment of that person if he had not been so convicted or detained subsequent to such approval;

(c) he has completed the age of 21 years and has not attained the age of 70 years:

Provided that where he has attained the age of 70 years; and where his appointment is approved by a special resolution passed by the company in general meeting, no further approval of the Central Government shall be necessary for such appointment;

(d) where he is a managerial person in more than one company, he draws remuneration from one or more companies subject to the ceiling provided in section V of Part II;

(e) he is resident in India.

Explanation : For the purpose of above, resident in India includes a person who has been staying in India for a continuous period of not less than twelve months immediately preceding the date of his appointment as a managerial person and who has come to stay in India:

(i) for taking up employment in India, or
(ii) for carrying on a business or vocation in India.

But this condition shall not be applicable to the companies in Special Economic Zones, as may be notified by Department of Commerce from time to time.

However, a person, being a non-resident in India, shall enter India only after obtaining a proper Employment Visa from the concerned Indian mission abroad. For this purpose, such person shall be required to furnish, along with the visa application form, profile of the company, the principal employer and the terms and conditions of such person’s appointment.

**Reappointment of Managing Director**

Under sections 196 and 203 of the Companies Act, 2013, appointment includes reappointment. Reappointment of a managing director of a company must be taken for consideration before the expiry of his term of office. If the reappointment of the managing director is approved and if it is not in accordance with the conditions specified in Schedule V then the approval of the Central Government must be obtained for such reappointment. Rest of the provisions for reappointment of a managing director are same as in the case of appointment of a managing director.

**Appointment of Key Managerial Personnel**

Section 203 of the Companies Act, 2013 read with Rule 8 mandates the appointment of Key Managerial Personnel and makes it obligatory for a listed company and every other public company having a paid-up share capital of rupees ten crores or more, to appoint following whole-time key managerial personnel:

(i) managing director, or Chief Executive Officer or manager and in their absence, a whole-time director;
(ii) company secretary; and

(iii) Chief Financial Officer:

Every whole-time key managerial personnel of a company shall be appointed by means of a resolution of the Board containing the terms and conditions of the appointment including the remuneration.

An individual shall not be appointed or reappointed as the chairperson of the company, as well as the managing director or Chief Executive Officer of the company at the same time unless the articles of such a company provide otherwise; or the company does not carry multiple businesses. However, such class of companies engaged in multiple businesses and which has appointed one or more Chief Executive Officers for each such business as may be notified by the Central Government are exempted from the above.

A whole-time key managerial personnel shall not hold office in more than one company except in its subsidiary company at the same time. However, he can hold such other directorship with the permission of the Board.

A whole-time key managerial personnel holding office in more than one company at the same time, shall, within a period of six months from such commencement, choose one company, in which he wishes to continue to hold the office of key managerial personnel.

A company may appoint or employ a person as its managing director, if he is the managing director or manager of one, and of not more than one, other company and such appointment or employment is made or approved by a resolution passed at a meeting of the Board with the consent of all the directors present at the meeting and of which meeting, and of the resolution to be moved thereat, specific notice has been given to all the directors then in India.

If the office of any whole-time key managerial personnel is vacated, the resulting vacancy shall be filled-up by the Board at a meeting of the Board within a period of six months from the date of such vacancy.

Functions of Company Secretary

According to Section 205 the functions of the company secretary shall include,—

(a) to report to the Board about compliance with the provisions of this Act, the rules made thereunder and other laws applicable to the company;

(b) to ensure that the company complies with the applicable secretarial standards;

(c) to discharge such other duties as may be prescribed.

Explanation.—For the purpose of this section, the expression “secretarial standards” means secretarial standards issued by the Institute of Company Secretaries of India constituted under section 3 of the Company Secretaries Act, 1980 and approved by the Central Government.

For the purposes of clause (c) of sub-section (1) of section 205, the Central Government has prescribed that the duties of Company Secretary shall also include—

(1) to provide to the directors of the company, collectively and individually, such guidance as they may require, with regard to their duties, responsibilities and powers;

(2) to facilitate the convening of meetings and attend Board, committee and general meetings, and maintain the minutes of these meetings;

(3) to obtain approvals from the Board, general meetings, the Government and such other authorities as required under the provisions of the Act;

(4) to represent before various regulators, Tribunal and other authorities under the Act in connection with discharge of various functions under the Act;
(5) to assist the Board in the conduct of the affairs of the company;
(6) to assist and advise the Board in ensuring good corporate governance and in complying with the corporate governance requirements and best practices; and
(7) to discharge such other duties as may be assigned by the Board from time to time;
(8) such other duties as have been prescribed under the Act and Rules.

Section 205(2) provides that provisions contained in section 204 and section 205 shall not affect the duties and functions of the Board of Directors, chairperson of the company, managing director or whole-time director under this Act, or any other law for the time being in force.

MANAGERIAL REMUNERATION

Just as profits drive business, incentives drive the managers of business. Not surprisingly then, in a fiercely competitive corporate environment, managerial remuneration is an important piece in the management puzzle. While it is important to incentivize the workforce performing the challenging role of managing companies, it is equally important not to go overboard with the perks and the pay. In India, to keep a check on unnecessary profit squandering by companies and, at the same time, to ensure adequate and reasonable compensation to managerial personnel, the law intervenes to do the balancing act.

Remuneration to Managerial Personnel

Section 197 of the Companies Act, 2013 prescribed the maximum ceiling for payment of managerial remuneration by a public company to its managing director whole-time director and manager which shall not exceed 11% of the net profit of the company in that financial year computed in accordance with section 198 except that the remuneration of the directors shall not be deducted from the gross profits.

Further, the company in general meeting may, with the approval of the Central Government, authorise the payment of remuneration exceeding 11% of the net profits of the company, subject to the provisions of Schedule V.

The net profits for the purposes of this section shall be computed in the manner referred to in section 198.

The remuneration payable to any one managing director or whole-time director or manager shall not exceed 5% of the net profits of the company and if there are more than one such director remuneration shall not exceed 10% of the net profits to all such directors and manager taken together.

Except with the approval of the company in general meeting, the remuneration payable to directors who are neither managing directors nor whole-time directors shall not exceed,—

— 1% of the net profits of the company, if there is a managing or whole-time director or manager;
— 3% of the net profits in any other case.

The percentages aforesaid shall be exclusive of any fees payable to directors for attending the meeting of the board/committees or for such other purposes as decided by the board.

Remunertion by a Company having no Profit or Inadequate Profit

If, in any financial year, a company has no profits or its profits are inadequate, the company shall not pay to its directors, including managing or whole time director or manager, any remuneration exclusive of any fees payable to directors except in accordance with the provisions of Schedule V and if it is not able to comply with Schedule V, with the previous approval of the Central Government.

In cases, where Schedule V is applicable on grounds of no profits or inadequate profits, any provision relating to the remuneration of any director which purports to increase or has the effect of increasing the amount thereof,
shall not have any effect unless such increase is in accordance with the conditions specified in that Schedule and if such conditions are not being complied, the approval of the Central Government had been obtained.

Remuneration to Directors in other Capacity [Section 197(4)]

The remuneration payable to the directors including managing or whole-time director or manager shall be inclusive of the remuneration payable for the services rendered by him in any other capacity except the following:

(a) the services rendered are of a professional nature; and

(b) in the opinion of the Nomination and Remuneration Committee (if applicable) or the Board of Directors in other cases, the director possesses the requisite qualification for the practice of the profession.

Sitting Fees to Directors for Attending the Meetings [Section 197(5)]

A director may receive remuneration by way of fee for attending the Board/Committee meetings or for any other purpose as may be decided by the Board. Provided that the amount of such fees shall not exceed the amount as may be prescribed.

The Central Government through rules prescribed that the amount of sitting fees payable to a director for attending meetings of the Board or committees thereof may be such as may be decided by the Board of directors or the Remuneration Committee thereof which shall not exceed the sum of rupees 1 lakh per meeting of the Board or committee thereof.

The Board may decide different sitting fee payable to independent and non-independent directors other than whole-time directors.

Monthly Remuneration to Director or Manager

A director or manager may be paid remuneration either by way of a monthly payment or at a specified percentage of the net profits of the company or partly by one way and partly by the other. [Section 197 (6)]

An independent director shall not be entitled to any stock option and may receive remuneration by way of fees, reimbursement of expenses for participation in the Board and other meetings and profit related commission as may be approved by the members. [Section 197(7)]

Any director who is in receipt of any commission from the company and who is a managing or whole-time director of the company shall not be disqualified from receiving any remuneration or commission from any holding company or subsidiary company of such company subject to its disclosure by the company in the Board’s report. [Section 197 (14)]

Remuneration Drawn in Excess of Prescribed Limit

If any director draws or receives, directly or indirectly, by way of remuneration any such sums in excess of the limit prescribed or without the prior sanction of the Central Government, where it is required, he shall refund such sums to the company and until such sum is refunded, hold it in trust for the company. [Section 197(9)]

The company shall not waive the recovery of any sum refundable to it under sub-section 9 mentioned above, unless permitted by the Central Government. [Section 197 (10)]

Insurance Premium as Part of Remuneration

Where any insurance is taken by a company on behalf of its managing director, whole-time director, manager, Chief Executive Officer, Chief Financial Officer or Company Secretary for indemnifying any of them against any liability in respect of any negligence, default, misfeasance, breach of duty or breach of trust for which they may be guilty in relation to the company, the premium paid on such insurance shall not be treated as part of the remuneration payable to any such personnel.

However, if such person is proved to be guilty, the premium paid on such insurance shall be treated as part of the remuneration. [Section 197(13)]
Disclosure of Remuneration in Board Report [(Section 197(14)]

Every listed company shall disclose in the Board’s report, the ratio of the remuneration of each director to the median employee’s remuneration and such other details as may be prescribed.

The central government through rules prescribed the following disclosure by a listed company in its Board’s report:

(i) the ratio of the remuneration of each director to the median remuneration of the employees of the company for the financial year;

(ii) percentage increase in remuneration of each director and CEO in the financial year;

(iii) percentage increase in the median remuneration of employees in the financial year;

(iv) number of permanent employees on the rolls of company;

(v) explanation on the relationship between average increase in remuneration and company performance;

(vi) comparison of the remuneration of the Key Managerial Personnel against the performance of the company;

(vii) variations in the market capitalisation of the company, price earnings ratio as at the closing date of the current financial year and previous financial year and percentage increase over decrease in the market quotations of the shares of the company in comparison to the rate at which the company came out with the last public offer in case of listed companies, and in case of unlisted companies, the variations in the net worth of the company as at the close of the current financial year and previous financial year;

(viii) average percentile increase already made in the salaries of employees other than the managerial personnel in the last financial year and its comparison with the percentile increase in the managerial remuneration and justification thereof and point out if there are any exceptional circumstances for increase in the managerial remuneration;

(ix) comparison of the each remuneration of the Key Managerial Personnel against the performance of the company;

(x) the key parameters for any variable component of remuneration availed by the directors;

(xi) the ratio of the remuneration of the highest paid director to that of the employees who are not directors but receive remuneration in excess of the highest paid director during the year;

(ix) affirmation that the remuneration is as per the remuneration policy of the company.

The board’s report shall include a statement showing the name of every employee of the company who-

(i) if employed throughout the financial year, was in receipt of remuneration for that year which, in the aggregate, was not less than sixty lakh rupees;

(ii) if employed for a part of the financial year, was in receipt of remuneration for any part of that year, at a rate which, in the aggregate, was not less than five lakh rupees per month;

(iii) if employed throughout the financial year or part thereof, was in receipt of remuneration in that year which, in the aggregate, or as the case may be, at a rate which, in the aggregate, is in excess of that drawn by the managing director or whole-time director or manager and holds by himself or along with his spouse and dependent children, not less than two percent of the equity shares of the company.

The above statement shall also indicate -

(i) Designation of the employee;
(ii) Remuneration received;

(iii) Nature of employment, whether contractual or otherwise;

(iv) Qualifications and experience of the employee;

(v) Date of commencement of employment;

(vi) The age of such employee;

(vii) The last employment held by such employee before joining the company;

(viii) The percentage of equity shares held by the employee in the company within the meaning of sub-clause (iii) of sub-rule (2) above; and

(ix) Whether any such employee is a relative of any director or manager of the company and if so, name of such director.

The particulars of employees posted and working in a country outside India, not being directors or their relatives, drawing more than 60 lakh rupees per financial year or 5 lakh rupees per month, as the case may be, shall not be included in the above statement of the Board’s report but such particulars shall be filed with the Registrar of Companies while filing the financial statement and Board Reports and such particulars shall be made available to any shareholder on a specific request made by him during the course of annual general meeting wherein financial statements for the relevant financial year are proposed to be adopted by shareholders.

Managerial Remuneration under Schedule V (Part II)

Section I : Remuneration by Companies having Profits

A company having profits in a financial year may pay remuneration to its managerial persons in accordance with Section 197.

Section II : Remuneration by Companies having no profits or inadequate profits without Central Government approval

Where in any financial year during the currency of tenure of a managerial person, a company has no profits or its profits are inadequate, it may, without Central Government approval, pay remuneration to the managerial person not exceeding the higher of the limits under (A) and (B) below:

(A):

<table>
<thead>
<tr>
<th>Where the effective capital is</th>
<th>Limit of yearly remuneration payable shall not exceed (Rs.)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Negative or less than 5 Crore</td>
<td>30 Lakhs</td>
</tr>
<tr>
<td>5 Crore and above but less than 100 Crore</td>
<td>42 Lakhs</td>
</tr>
<tr>
<td>100 Crore and above but less than 250 Crore</td>
<td>60 Lakhs</td>
</tr>
<tr>
<td>250 Crore and above</td>
<td>60 Lakhs plus 0.01% of the effective capital in excess of Rs. 250 Crore</td>
</tr>
</tbody>
</table>

If a special resolution is passed by the shareholders, the above limits shall be doubled.

Explanation: It is hereby clarified that for a period less than one year, the limits shall be pro-rated.

(B) In the case of managerial person who was not a shareholder, employee or a Director of the company at any time during the two years prior to his appointment as managerial person- 2.5% of the current relevant profit.
If a special resolution is passed by the shareholders, this limit shall be doubled.

The Schedule V (Part II) also prescribes certain conditions and additional disclosures to be made in the explanatory statement to the notice of the general meeting, where remuneration is required to be paid in accordance with Schedule V.

**Remuneration in Special Circumstances (Section III)**

Section III of Schedule V provides special circumstances under which companies having no profit or inadequate profit can pay remuneration to its managerial personnel in excess of amount provided in Section II of Schedule V above, without Central Government’s approval.

**Calculation of Net Profit for the purpose of Managerial Remuneration (Section 198)**

Section 198 of the Companies Act, 2013 lays down the manner of calculations of net profits of a company any financial year for purposes of Section 197. Sub-Section (2) specifies the sums for which credit shall be given and sub-section (3) specifies the sums for which credit shall not be given while calculating the net profit.

Similarly, sub-section (4)/(5) specifies the sums which shall be deducted/not deducted while calculating the net profit.

**Recovery of Managerial Remuneration in certain cases (Section 199)**

This is a new provision introduced in the new Act. It provides for recovery of remuneration including stock options received by the specified Managerial Personnel, where the benefits given to them are found to be in excess of what is reflected in the restated financial statements.

It states that without prejudice to any liability incurred under the provisions of this Act or any other law for the time being in force, where a company is required to re-state its financial statements due to fraud or non-compliance with any requirement under this Act and the rules made there under, the company shall recover from any past or present managing director or whole-time director or manager or Chief Executive Officer (by whatever name called) who, during the period for which the financial statements are required to be re-stated, received the remuneration (including stock option) in excess of what would have been payable to him as per restatement of financial statements.

**Central Government or Company to Fix Remuneration Limit (Section 200)**

In respect of cases where the company has inadequate or no profits, the Central Government or a company may fix the remuneration within the limits specified in the Act. While doing so, the Central Government or the company shall have regard to—

(a) the financial position of the company;
(b) the remuneration or commission drawn by the individual concerned in any other capacity;
(c) the remuneration or commission drawn by him from any other company;
(d) professional qualifications and experience of the individual concerned;
(e) such other matters as may be prescribed.

As per Rule 13.4 for the purpose of item (e) of section 200, the Central Government or the company shall have regard to the following matters while granting approval:

(1) Financial and operating performance of the company during the three preceding financial years.
(2) Relationship between remuneration and performance.
(3) The principle of proportionality of remuneration within the company, ideally by a rating methodology which compares the remuneration of directors to that of other executive directors on the board and employees or executives of the company.
(4) Whether remuneration policy for directors differs from remuneration policy for other employees and if so, an explanation for the difference.

(5) The securities held by the director, including options and details of the shares pledged as at the end of the preceding financial year.

Compensation for Loss of Office of Managing or Whole-time Director or Manager (Section 202)

No change has been made in this Section. It is a reproduction of the Section 318 of the Companies Act, 1956.

Section 202 provides that a company may make payment to a managing or whole-time director or manager, but not to any other director, by way of compensation for loss of office, or as consideration for retirement from office or in connection with such loss or retirement.

However, No payment shall be made in the following cases:—

(a) where the director resigns from his office as a result of the reconstruction/amalgamation of the company and is appointed as the managing or whole-time director, manager or other officer of the reconstructed company/of resulting company from the amalgamation;
(b) where the director resigns from his office otherwise than on the reconstruction/amalgamation of the company;
(c) where the office of the director is vacated due to disqualification;
(d) where the company is being wound up due to the negligence or default of the director;
(e) where the director has been guilty of fraud or breach of trust or gross negligence or mismanagement of the conduct of the affairs of the company or any subsidiary company or holding company; and
(f) where the director has instigated, or has taken part directly or indirectly in bringing about, the termination of his office.

Any payment made to a managing or whole-time director or manager shall not exceed the remuneration which he would have earned if he had been in office for the remainder of his term or for three years, whichever is shorter, calculated on the basis of the average remuneration actually earned by him during a period of three years immediately preceding the date on which he ceased to hold office, or where he held the office for a lesser period than three years, during such period. (Sub-section 3)

Provided that no such payment shall be made to the director in the event of the commencement of the winding up of the company, whether before or at any time within twelve months after, the date on which he ceased to hold office, if the assets of the company on the winding up, after deducting the expenses thereof, are not sufficient to repay to the shareholders the share capital, including the premiums, if any, contributed by them.

However, Section 202 not prohibit the payment to a managing or whole-time director, or manager, of any remuneration for services rendered by him to the company in any other capacity. (Sub-section 4)

Application to Central Government

Section 201 of the Companies Act, 2013 provides that before any application is made by a company to the Central Government under any of the sections aforesaid, there shall be issued a general notice to the members indicating the nature of the application proposed to be made and such notice shall be published at least once in a newspaper in the principal language of the district in which the registered office of the company is situate and at least once in English in an English newspaper circulating in that district.

The copies of the notices, together with a certificate by the company as to the due publication thereof, shall be attached to the application.

The Central Government prescribed that every application made to the Central Government under the provisions of Chapter XIII shall be made in Form No. 13.2.
It further prescribed that the companies other than listed companies and subsidiary of a listed company may without Central Government approval pay remuneration to its managerial person in the event of no profit or inadequate profit beyond ceiling prescribed in section II, part II of Schedule V subject to complying with the following conditions:

(i) Payment of remuneration is approved by a resolution passed by the Board and, in the case of a company covered under sub-section (1) of section 178 also by the Nomination and Remuneration Committee, if any and while doing so record in writing clear reason and justification for payment of remuneration beyond the said limit;

(ii) the company has not made any default in repayment of any of its debts (including public deposits) or debentures or interest payable thereon for a continuous period of thirty days in the preceding financial year before the date of appointment of such managerial person;

(iii) Prior approval of shareholders by way of a special resolution at a general meeting of the company for payment of remuneration for a period not exceeding three years;

(iv) A statement along-with a notice calling the general meeting referred to clause (iii) of sub-rule (2) above, shall contain the information as per sub clause (iv) of second proviso to clause (B) of section II of part-II of Schedule V of the Act including reasons and justification for payment of remuneration beyond the said limit.

**Conclusion**

The new Act has considerably liberalised the provisions concerning Managerial Remuneration, subject to adequate disclosures to the shareholders. The necessity of approaching Central Government for approval has been substantially dispensed with.

A synopsis of the modifications made is given below:

1. Now, no approval of the Central Government is required for making payment of salary to Non Executive Directors by way of monthly payment provided it is within the limits provided.

2. The re-appointment of a managerial person cannot be made earlier than one year before the expiry of their term instead of two years as per the existing provision of section 317 of the 1956 Act.

3. Any Director who is in receipt of any commission from the company and who is a Managing Director or Whole-time Director of the Company can also receive any remuneration or commission from any Holding Company or Subsidiary Company of such Company subject to its disclosure by the Company in the Board’s Report. This is a departure from the provision in the Companies Act, 1956. Further the directors however cannot accept remuneration or commission from any other Company including Associate Companies.

4. Independent Directors may be paid different Sitting Fees compared to other directors. Independent Directors cannot receive stock options. They may receive remuneration only by way of sitting fees, or reimbursement of expenses for participation in the Board and other meetings or profit related commission as approved by the members of the company.

5. Every Listed Company will have to disclose in the Board’s report the ratio of the remuneration of each Director to the median employee’s remuneration and such other details as prescribed by the Central Government through the Rules. In view of the widespread debate in the country and abroad on the subject of excessive managerial pay, the purpose of bringing this provision appears to disclose to the shareholders the extent of pay comparison among employees and directors.

6. Premium paid on any insurance policy taken by a Company on behalf of its Managing Director, Whole-Time Director, Manager, Chief Executive Officer, Chief Financial Officer or Company Secretary for indemnifying any of them against any liability in respect of any negligence, default, misfeasance, breach of duty or breach of trust for which they may be guilty in relation to the Company, shall not be treated as part of the remuneration payable to them unless such personnel is proved to be guilty.
7. For remuneration payable to any Director in any other capacity, if such services are of professional nature, no approval of the Central Government is required, when the Nomination and Remuneration Committee or Board of Directors is of the opinion, that the person possesses the necessary qualification for practice of profession.

8. In case of Nil or inadequate profit, the conditions under which the Company can pay remuneration to managerial person has been changed.

SECRETARIAL AUDIT

Secretarial Audit is a compliance audit and it is a part of total compliance management in an organisation. The Secretarial Audit is an effective tool for corporate compliance management. It helps to detect non-compliance and to take corrective measures.

Secretarial Audit is a process to check compliance with the provisions of various laws and rules/regulations/procedures, maintenance of books, records etc., by an independent professional to ensure that the company has complied with the legal and procedural requirements and also followed the due process. It is essentially a mechanism to monitor compliance with the requirements of stated laws.

Considering the increasing importance of Corporate Governance, Section 204 of the Companies Act, 2013 mandates every listed company and such other class of prescribed companies to annex a Secretarial Audit Report, given by a company secretary in practice with its Board’s report.

The Central Government through rules has prescribed such other class of companies as under-

(a) every public company having a paid-up share capital of fifty crore rupees or more; or
(b) every public company having a turnover of two hundred fifty crore rupees or more.

It shall be the duty of the company to give all assistance and facilities to the company secretary in practice, for auditing the secretarial and related records of the company.

The Board of Directors, in their report, shall explain in full any qualification or observation or other remarks made in the Secretarial Audit Report.

Secretarial Audit is an independent, objective assurance intended to add value and improve an organisation’s operations. It helps to accomplish the organisation’s objectives by bringing a systematic, disciplined approach to evaluate and improve effectiveness of risk management, control, and governance processes.

The Institute has brought out a detailed Guidance Note on Secretarial Audit.
ACCEPTANCE OF DEPOSITS*

Introduction

Section 73 to 76 of the Companies Act, 2013 (herein after called the Act) read with Companies (Acceptance of Deposits) Rules, 2014 made under Chapter V of the Act (herein after called ‘the Rules’) regulate the invitation and acceptance of deposits. It prohibits acceptance of deposits except from the members through ordinary resolution or acceptance deposits by “eligible company” being a public company, subject to conditions specified in the rules. (Eligible company is defined under the rules based on net worth and turnover).

The Act read with the Rules also deals with various aspects including prohibition of acceptance of deposits except from the members, subject to conditions, inclusive definition of deposit, eligible company, depositor etc., conditions for acceptance of deposits such as approval of shareholders in a general meeting, credit rating, provision of deposit insurance, trustees of deposit holders etc., In addition the act protect the interest of depositor through Section 37 and 245(class action suit by requisite number of depositors)of the Act. In addition the act provides for stringent penalty for any violations in complying with the provisions of this Act, in this regard.

Proviso to Section 73(1) read with rule 1(3) of Companies (Acceptance of Deposits) Rules 2014 excludes banking Companies, non-banking financial companies as defined in the Reserve Bank of India Act, 1934 and registered with Reserve Bank of India, a housing finance company registered with National Housing Bank established under the National Housing Bank Act 1987 and any other company as may be specified by the government in this regard.

Definition of certain terms used

What is a deposit?

Section 2(31) of the Companies Act (herein after called the act) defines deposit as under

“deposit” includes any receipt of money by way of deposit or loan or in any other form by a company, but does not include such categories of amount as may be prescribed in consultation with the Reserve Bank of India;

What is not a deposit?

Inclusive Definition of the word “Deposit” under Rule 2(c) of Rules made under Chapter V is as under

“Deposit” includes any receipt of money by way of deposit or loan or in any other form, by a company, but does not include-

(i) any amount received from the Central Government or a State Government, or any amount received from any other source whose repayment is guaranteed by the Central Government or a State Government or any amount received from a local authority, or any amount received from a statutory authority constituted under an Act of parliament or a state legislature;

(ii) any amount received from foreign Governments, foreign/international banks, multilateral financial institutions (including, but not limited to, International Finance Corporation, Asian Development Bank, Commonwealth Development Corporation and International Bank for Industrial and Financial Reconstruction), foreign government owned development financial institutions, foreign export credit agencies, foreign collaborators, foreign bodies corporate and foreign citizens, foreign authorities or persons resident outside India subject to the provisions of Foreign Exchange Management Act, 1999 and rules and regulations made there under;

- **Topic for Discussion at Business Breakfast Session. Contents Reproduced from Souvenir of 9th International Conference held on July 06, 2014 at Malaysia. The views expressed in the discussion paper do not necessarily reflect those of the Institute.**
(iii) any amount received as a loan or facility from any banking company or from the State Bank of India or any of its subsidiary banks or from a banking institution notified by the Central Government under section 51 of the Banking Regulation Act, 1949 (10 of 1949), or a corresponding new bank as defined in clause (d) of section 2 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1980 (5 of 1970), or from a co-operative bank as defined in clause (b-ii) of section 2 of the Reserve Bank of India Act, 1934 (2 of 1934);

(iv) any amount received as a loan or financial assistance from Public Financial Institutions notified by the Central Government in this behalf in consultation with the Reserve Bank of India, regional financial institutions, Insurance Companies, Scheduled Banks as defined in the Reserve Bank of India Act, 1934;

(v) any amount received against issue of commercial paper or any other instrument issued in accordance with the guidelines or notification issued by the Reserve Bank of India;

(vi) any amount received by a company from any other company;

(vii) any amount received and held pursuant to an offer made in accordance with the provisions of the Act towards subscription to any securities, including share application money or advance towards allotment of securities pending allotment, so long as such amount is appropriated only against the amount due on allotment of the securities applied for. If the securities for which application money or advance for such securities was received cannot be allotted within 60 days from the date of receipt of the application money or advance for such securities and such application money or advance is not refunded to the subscribers within 15 days from the date of completion of sixty days, such amount shall be treated as a deposit under these rules. For the purpose of this rule any adjustment of the amount for any other purpose will not be treated as refund;

(viii) any amount received from a person who, at the time of the receipt of the amount, was a director of the company. The director from whom money is received, furnishes to the company at the time of giving the money, a declaration in writing to the effect that the amount is not being given out of funds acquired by him by borrowing or accepting loans or deposits from others;

(ix) any amount raised by the issue of bonds or debentures secured by a first charge or a charge ranking pari passu with the first charge on any assets referred to in Schedule III of the Act excluding intangible assets of the company or bonds / debentures compulsorily convertible into shares of the company within five years. If such bonds or debentures are secured by the charge of any assets referred to in Schedule III of the Act excluding intangible assets, the amount of such bonds or debentures shall not exceed the market value of such assets as assessed by a registered valuer;

(x) any amount received from an employee not exceeding his annual salary, under a contract of employment with the company in the nature of non-interest bearing security deposit;

(xi) any non-interest bearing amount received or held in trust;

(xii) any amount received in the course of or for the purposes of the business of the company:

(a) as an advance for the supply of goods or provision of services provided that such advance is appropriated against supply of goods or provision of services within a period of three hundred and sixty five days from acceptance of such advance. In case of any advance which is subject matter of any legal proceedings before any court of law, the said time limit of three hundred and sixty five days shall not apply.

(b) as advance, accounted for in any manner whatsoever, received in connection with consideration for property under an agreement or arrangement, provided that such advance is adjusted against the property in accordance with the terms of agreement or arrangement.

(c) as security deposit for the performance of the contract for supply of goods or provision of services.
(d) as advance received under long term projects or for supply of capital goods except those covered under item (b) above.

If the amount received under (a) (b) and (d) above becomes refundable (with or without interest) because the company accepting the money does not have necessary permission or approval to deal in the goods or properties or services for which the money is taken, the amount received shall be deemed to be a Deposit under these rules.

(xiii) any amount brought in by the promoters of the company by way of unsecured loan in pursuance of the stipulation of any lending financial institution or a bank subject to fulfillment of the following conditions:

(a) the loan is brought in pursuance of the stipulation imposed by the lending institutions on the promoters to contribute such finance; and

(b) the loan is provided by the promoters themselves or by their relatives or by both; and

(c) the exemption under this sub-clause shall be available only till the loans of financial institution or bank are repaid and not thereafter.

(xiv) any amount accepted by a Nidhi Company in accordance with the rules made under Section 406 of the Act.

For the purposes of this clause, any amount.

(a) received by the company, whether in the form of instalments or otherwise, from a person with promise or offer to give returns, in cash or in kind, on completion of the period specified in the promise or offer, or earlier, accounted for in any manner whatsoever, or

(b) any additional contributions, over and above the amount under item (a) above, made by the company as part of such promise or offer, shall be treated as a deposit.

Who is depositor?

Rule 2(1)(d) under Chapter XV defines depositor as under

‘Depositor’ means-

(i) any member of the company who has made a deposit with the company in accordance with sub-section (2) of section 73 of the Act, or

(ii) any person who has made a deposit with a public company in accordance with section 76 of the Act.

Who is an Eligible Company?

Rule 2(1)(e) of Rules made under Chapter V defines eligible company as under:

“Eligible company” means a public company as referred to in sub-section (1) of section 76, having a net worth of not less than one hundred crore rupees or a turnover of not less than five hundred crore rupees and which has obtained the prior consent of the company in general meeting by means of a special resolution and also filed the said resolution with the Registrar of Companies and where applicable, with the Reserve Bank of India before making any invitation to the Public for acceptance of Deposits;

Provided that an eligible company, which is accepting deposits within the limits specified under clause (c) of sub-section (1) of section 180, may accept deposits by means of an ordinary resolution;

“Trustee” means the Trustee as defined in section 3 of the Indian Trusts Act, 1882.

Prohibition on acceptance of deposits from public

Section 73(1) states that, no company shall invite, accept or renew deposits under this Act from the public except in a manner provided under Chapter V.

Exceptions
Section 73(1) prohibition, does not apply to
— a banking company; and
— non-banking financial company as defined in the Reserve Bank of India Act, 1934; and
— to such other company as the Central Government may, after consultation with the Reserve Bank of India, specify in this behalf.

Conditions for acceptance of deposits from Members

Section 73(2) states that a company may, subject to
(i) the passing of a resolution in general meeting; and
(ii) subject to such rules as may be prescribed in consultation with the Reserve Bank of India,
accept deposits from its members on such terms and conditions, including the provision of security, if any, or for the repayment of such deposits with interest, as may be agreed upon between the company and its members, subject to the fulfilment of the following conditions, namely:—

(a) issuance of a circular to its members including therein a statement showing the financial position of the company, the credit rating obtained, the total number of depositors and the amount due towards deposits in respect of any previous deposits accepted by the company and such other particulars in such form and in such manner as may be prescribed;

(b) filing a copy of the circular along with such statement with the Registrar within thirty days before the date of issue of the circular;

(c) depositing such sum which shall not be less than fifteen per cent. of the amount of its deposits maturing during a financial year and the financial year next following, and kept in a scheduled bank in a separate bank account to be called as deposit repayment reserve account;

(d) providing such deposit insurance in such manner and to such extent as may be prescribed;

(e) certifying that the company has not committed any default in the repayment of deposits accepted either before or after the commencement of this Act or payment of interest on such deposits; and

(f) providing security, if any, for the due repayment of the amount of deposit or the interest thereon including the creation of such charge on the property or assets of the company. In case when a company does not secure the deposits or secures such deposits partially, then, the deposits shall be termed as “unsecured deposits” and shall be so quoted in every circular, form, advertisement or in any document related to invitation or acceptance of deposits.

Section 73(3) states that every deposit accepted by a company under sub-section (2) shall be repaid with interest in accordance with the terms and conditions of the agreement referred to in that sub-section.

Section 73(4) states that when a company fails to repay the deposit or part thereof or any interest thereon under sub-section (3), the depositor concerned may apply to the Tribunal for an order directing the company to pay the sum due or for any loss or damage incurred by him as a result of such non-payment and for such other orders as the Tribunal may deem fit.

Deposit Repayment Reserve

Section 73(5) states that the deposit repayment reserve account referred to in clause (c) of sub-section (2) shall not be used by the company for any purpose other than repayment of deposits.
Deposit accepted before the commencement of the Act

Section 74(1) states that when, in respect of any deposit accepted by a company before the commencement of this Act, the amount of such deposit or part thereof or any interest due thereon remains unpaid on such commencement or becomes due at any time thereafter, the company shall—

(a) file, within a period of three months from such commencement or from the date on which such payments, are due, with the Registrar a statement of all the deposits accepted by the company and sums remaining unpaid on such amount with the interest payable thereon along with the arrangements made for such repayment, notwithstanding anything contained in any other law for the time being in force or under the terms and conditions subject to which the deposit was accepted or any scheme framed under any law; and

(b) repay within one year from such commencement or from the date on which such payments are due, whichever is earlier.

Section 74(2) states that the tribunal may on an application made by the company, after considering the financial condition of the company, the amount of deposit or part thereof and the interest payable thereon and such other matters, allow further time as considered reasonable to the company to repay the deposit.

Section 74(3) states that if a company fails to repay the deposit or part thereof or any interest thereon within the time specified in sub-section (1) or such further time as may be allowed by the Tribunal under sub-section (2), the company shall, in addition to the payment of the amount of deposit or part thereof and the interest due, be punishable with fine which shall not be less than one crore rupees but which may extend to ten crore rupees and every officer of the company who is in default shall be punishable with imprisonment which may extend to seven years or with fine which shall not be less than twenty-five lakh rupees but which may extend to two crore rupees, or with both.

Damages for fraud

Section 75(1) states that when a company fails to repay the deposit or part thereof or any interest thereon referred to in section 74 within the time specified in sub-section (1) of that section or such further time as may be allowed by the Tribunal under sub-section (2) of that section, and it is proved that the deposits had been accepted with intent to defraud the depositors or for any fraudulent purpose, every officer of the company who was responsible for the acceptance of such deposit shall, without prejudice to the provisions contained in sub-section (3) of that section and liability under section 447, be personally responsible, without any limitation of liability, for all or any of the losses or damages that may have been incurred by the depositors.

Section 75(2) states that any suit, proceedings or other action may be taken by any person, group of persons or any association of persons who had incurred any loss as a result of the failure of the company to repay the deposits or part thereof or any interest thereon.

Acceptance of deposit from public by certain companies

Section 76(1) states that notwithstanding anything contained in section 73, a public company, having such net worth or turnover as may be prescribed, may accept deposits from persons other than its members subject to compliance with the requirements provided in sub-section (2) of section 73 and subject to such rules as the Central Government may, in consultation with the Reserve Bank of India, prescribe.

Such a company shall be required to obtain the rating (including its networth, liquidity and ability to pay its deposits on due date) from a recognised credit rating agency for informing the public the rating given to the company at the time of invitation of deposits from the public which ensures adequate safety and the rating shall be obtained for every year during the tenure of deposits.

Every company accepting secured deposits from the public shall within thirty days of such acceptance, create a charge on its assets of an amount not less than the amount of deposits accepted in favour of the deposit holders in accordance with such rules as may be prescribed.
Section 76(2) states that the provisions of this Chapter shall, mutatis mutandis, apply to the acceptance of deposits from public under this section.

**Other remedies provided under Companies Act, 2013**

As per Section 245(1)(g) requisite number of depositor or depositors may, if they are of the opinion that the management or conduct of the affairs of the company are being conducted in a manner prejudicial to the interests of the company or its members or depositors, file an application before the Tribunal on behalf of the depositors for seeking orders including claiming damages or compensation or demand any other suitable action from or against—

— the company or its directors for any fraudulent, unlawful or wrongful act or omission or conduct or any likely act or omission or conduct on its or their part;

— the auditor including audit firm of the company for any improper or misleading statement of particulars made in his audit report or for any fraudulent, unlawful or wrongful act or conduct; or

— any expert or advisor or consultant or any other person for any incorrect or misleading statement made to the company or for any fraudulent, unlawful or wrongful act or conduct or any likely act or conduct on his part;

— to seek any other remedy as the Tribunal may deem fit.

Section 245 (2) states that when the depositors seek any damages or compensation or demand any other suitable action from or against an audit firm, the liability shall be of the firm as well as of each partner who was involved in making any improper or misleading statement of particulars in the audit report or who acted in a fraudulent, unlawful or wrongful manner.

Section 245(3)(ii) states that the requisite number of depositors provided in sub-section (1) shall not be less than one hundred depositors or not less than such percentage of the total number of depositors as may be prescribed, whichever is less, or any depositor or depositors to whom the company owes such percentage of total deposits of the company as may be prescribed.

**Rules under Chapter V**

*RULE 3 - TERMS AND CONDITIONS AS TO ACCEPTANCE OF DEPOSITS*

Rule 3 under Chapter V states that on and from the commencement of these rules,—

— No company under sub-section (2) of section 73 and no eligible company shall accept or renew any deposit, whether secured or unsecured, which is repayable on demand or upon receiving a notice, within a period of less than six months or more than thirty-six months from the date of acceptance or renewal of such deposit:

*Exceptions*

A company may, for the purpose of meeting any of its short-term requirements of funds, accept or renew such deposits for repayment earlier than six months from the date of deposit or renewal, as the case may be, subject to the condition that-

(a) such deposits shall not exceed ten per cent of the aggregate of the paid up share capital and free reserves of the company, and

(b) such deposits are repayable not earlier than three months from the date of such deposit or renewal thereof.

Deposits may be accepted in joint names not exceeding three, with or without any of the clauses, namely, “Jointly”, “Either or Survivor”, “First named or Survivor”, “Anyone or Survivor”, if the depositors desires so.
Rule 3(3) states that no company referred to in sub-section (2) of section 73 shall accept or renew any deposits if the amount of such deposits together with the amount of other deposits outstanding as on the date of acceptance or renewal of such deposits exceeds 25 per cent of the aggregate of the paid-up share capital and free reserves of the company.

Rule 3(4) states that no Eligible company shall accept or renew

(a) Any deposit from its members, if the amount of such deposit together with the amount of deposits outstanding as on the date of acceptance or renewal of such deposits from members exceeds ten per cent of the aggregate of the paid-up share capital and free reserves of the company;

(b) Any other deposit, if the amount of such deposit together with the amount of such other deposits, other than the deposit referred to in (a) above, together with the amount of deposits outstanding on the date of acceptance or renewal exceeds twenty-five per cent of aggregate of the paid-up share capital and free reserves of the company.

Rule 3(5) - deposits by Government Companies

No Government company eligible to accept deposits under section 76 shall accept or renew any deposit, if the amount of such deposits together with the amount of other deposits outstanding as on the date of acceptance or renewal exceeds thirty five per cent. of the aggregate of its paid up share capital and free reserves of the company.

Rule 3(6) - Rate of interest of deposits/payment of brokerage

Rule 3(6) states that no company under sub-section (2) of section 73 or any Eligible company shall invite or accept or renew any deposits in any form, carrying a rate of interest or pay brokerage thereon at a rate exceeding the maximum rate of interest or brokerage prescribed by the Reserve Bank of India for acceptance of deposits by non-banking financial companies.

Who is eligible to receive brokerage?

Only the person who is authorized, in writing, by a company to solicit deposits on its behalf and through whom deposits are actually procured will be entitled to the brokerage and payment of brokerage to any other person for procuring deposits shall be deemed to be in violation of these Rules.

Rule 3(7) states that the company shall not reserve to itself either directly or indirectly a right to alter, to the prejudice or disadvantage of the depositor, any of the terms and conditions of the deposit, deposit trust deed and deposit insurance contract after circular or circular in the form of advertisement is issued and deposits are accepted.

Rule 4 - Form and particulars of advertisements/circulars

(1) Every company referred to in sub-section (2) of section 73 intending to invite deposit from its members shall issue a circular to all its members by registered post with acknowledgement due or speed post or by electronic mode in Form DPT-1. In addition to issue of such circular to all members in the manner specified above, the circular may be published in English language in an English newspaper and in vernacular language in a vernacular newspaper having wide circulation in the State in which the registered office of the company is situated.

(2) Every eligible company intending to invite deposits shall issue a circular in the form of an advertisement in Form DPT-1 for the purpose in English language in an English newspaper and in vernacular language in one vernacular newspaper having wide circulation in the State in which the registered office of the company is situated.

(3) Every company inviting deposits from the public shall upload a copy of the circular on its website, if any.
(4) No company shall issue or allow any other person to issue or cause to be issued on its behalf, any circular or a circular in the form of advertisement inviting deposits, unless such circular or circular in the form of advertisement is issued on the authority and in the name of the Board of directors of the company.

(5) No circular or a circular in the form of advertisement shall be issued by or on behalf of a company unless, not less than thirty days before the date of such issue, there has been delivered to the Registrar for registration a copy thereof signed by a majority of the directors of the company as constituted at the time the Board approved the circular or circular in the form of advertisement, or their agents, duly authorised by them in writing.

(6) A circular or circular in the form of advertisement issued shall be valid until the expiry of six months from the date of closure of the financial year in which it is issued or until the date on which the financial statement is laid before the company in annual general meeting or, where the annual general meeting for any year has not been held, the latest day on which that meeting should have been held in accordance with the provisions of the Act, whichever is earlier, and a fresh circular or circular in the form of advertisement shall be issued, in each succeeding financial year, for inviting deposits during that financial year.

For the purpose of this rule, the date of the issue of the newspaper in which the advertisement appears shall be taken as the date of issue of the advertisement and the effective date of issue of circular shall be the date of dispatch of the circular.

Rule 5 – Deposit Insurance

(1) Every company referred to in sub-section (2) of section 73 and every other eligible company inviting deposits shall enter into a contract for providing deposit insurance at least thirty days before the issue of circular or advertisement or at least thirty days before the date of renewal, as the case may be. For the purposes of this sub-rule, the amount as specified in the deposit insurance contract shall be deemed to be the amount in respect of both principal amount and interest due thereon.

(2) The deposit insurance contract shall specifically provide that in case the company defaults in repayment of principal amount and interest thereon, the depositor shall be entitled to the repayment of principal amount of deposits and the interest thereon by the insurer up to the aggregate monetary ceiling as specified in the contract. In the case of any deposit and interest not exceeding twenty thousand rupees, the deposit insurance contract shall provide for payment of the full amount of the deposit and interest and in the case of any deposit and the interest thereon in excess of twenty thousand rupees, the deposit insurance contract shall provide for payment of an amount not less than twenty thousand rupees for each depositor.

(3) The amount of insurance premium paid on the insurance of such deposits shall be borne by the company itself and shall not be recovered from the depositors by deducting the same from the principal amount or interest payable thereon.

(4) If any default is made by the company in complying with the terms and conditions of the deposit insurance contract which makes the insurance cover ineffective, the company shall either rectify the default immediately or enter into a fresh contract within thirty days and in case of non-compliance, the amount of deposits covered under the deposit insurance contract and interest payable thereon shall be repaid within the next fifteen days and if such a company does not repay the amount of deposits within said fifteen days it shall pay fifteen per cent. interest per annum for the period of delay and shall be treated as having defaulted and shall be liable to be punished in accordance with the provisions of the Act.

Rule 6 – Creation of Security

(1) For the purposes of providing security, every company referred to in sub-section (2) of section 73 and every eligible company inviting secured deposits shall provide for security by way of a charge on its assets
as referred to in Schedule III of the Act excluding intangible assets of the company for the due repayment of the amount of deposit and interest thereon for an amount which shall not be less than the amount remaining unsecured by the deposit insurance. In the case of deposits which are secured by the charge on the assets referred to in Schedule III of the Act excluding intangible assets, the amount of such deposits and the interest payable thereon shall not exceed the market value of such assets as assessed by a registered valuer. For the purposes of this sub-rule it is clarified that the company shall ensure that the total value of the security either by way of deposit insurance or by way of charge or by both on company’s assets shall not be less than the amount of deposits accepted and the interest payable thereon.

For the purposes of proviso to sub-clause (ix) of clause (c) of sub-rule (1) of rule 2 and this sub-rule, it is hereby clarified that 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. shall 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.

(2) The security (not being in the nature of a pledge) for deposits as specified in sub-rule (1) shall be created in favour of a trustee for the depositors on:

(a) specific movable property of the company, or

(b) specific immovable property of the company wherever situated, or any interest therein.

Rule 7 – Appointment of deposit trustees.

Consent of deposit trustees with respect to their appointment

No company under sub-section (2) of section 73 or any eligible company shall issue a circular or advertisement inviting secured deposits unless the company has appointed one or more deposit trustees for creating security for the deposits. A written consent shall be obtained from the deposit trustee(s) before their appointment and a statement shall appear in the circular or circular in the form of advertisement with reasonable prominence to the effect that the deposit trustee(s) have given their consent to the company to be so appointed.

Execution of deposit trust deed before issuing advertisement

The company shall execute a deposit trust deed in Form No. DPT-2 at least 7 days before issuing the circular or circular in the form of advertisement.

Certain persons not to be appointed as deposit trustees

No person including a company that is in the business of providing trusteeship services shall be appointed as a trustee for the deposit holders, if the proposed trustee -

(a) is a director, key managerial personnel or any other officer or an employee of the company or of its holding, subsidiary or associate company or a depositor in the company;

(b) is indebted to the company, or its subsidiary or its holding or associate company or a subsidiary of such holding company;

(c) has any material pecuniary relationship with the company;

(d) has entered into any guarantee arrangement in respect of principal debts secured by the deposits or interest thereon;

(e) is related to any person specified in clause (a) above.
Removal of deposit trustees

No deposit trustee may be removed from office after the issue of circular or advertisement and before the expiry of his term except with the consent of all the directors present at a meeting of the board. In case the company is required to appoint independent directors, at least one independent director shall be present in such meeting of the Board.

Duties of deposit trustees

It shall be the duty of every deposit trustee to:

1. Ensure that the assets of the company on which charge is created together with the amount of deposit insurance are sufficient to cover the repayment of the principal amount of secured deposits outstanding and interest accrued thereon;
2. Satisfy himself that the circular or advertisement inviting deposits does not contain any information which is inconsistent with the terms of the deposit scheme or with the trust deed and is in compliance with the rules and provisions of the Act;
3. Ensure that the company does not commit any breach of covenants and provisions of the trust deed;
4. Take such reasonable steps as may be necessary to procure a remedy for any breach of covenants of the trust deed or the terms of invitation of deposits;
5. Take steps to call a meeting of the holders of depositors as and when such meeting is required to be held;
6. Supervise the implementation of the conditions regarding creation of security for deposits and the terms of deposit insurance;
7. Do such acts as are necessary in the event the security becomes enforceable;
8. Carry out such acts as are necessary for the protection of the interest of depositors and to resolve their grievances.

Rule 9 - Meeting of depositors through deposit trustee

The meeting of all the depositors shall be called by the deposit trustee on:

1. Requisition in writing signed by at least one-tenth of the depositors in value for the time being outstanding;
2. The happening of any event, which constitutes a default or which in the opinion of the deposit trustee affects the interest of the depositors.

Rule 10 - Form of application for deposits

(i) On and from the commencement of these rules, no company shall accept, or renew any deposit, whether secured or unsecured, unless an application, in the form prescribed by the company, is submitted by the intending depositor for the acceptance of such deposit.

(ii) The application referred to in rule 18(i) shall contain a declaration by the intending depositor to the effect that the deposit is not being made out of any money borrowed by him from any other person.

Rule 11 - Nomination

A depositor may, at any time, make a nomination and the provisions of section 72 shall, as far as may be, apply to the nomination made under this Rule.

Rule 12 - Furnishing of deposit receipts to depositors

Every company shall, on the acceptance or renewal of a deposit, furnish to the depositor or his agent a deposit receipt for the amount received by the company, within a period of two weeks from the date of receipt of money or realization of cheques.
Deposit receipt referred to above shall be signed by an officer of the company duly authorized by the Board in this behalf and shall state the date of deposit, the name and address of the depositor, the amount received by the company as deposit, the rate and periodicity of interest payable thereon and the date on which the deposit is repayable.

Rule 13 - Maintenance of liquid assets and creation of Deposit Repayment Reserve Account

Every company referred to in sub-section (2) of section 73 and every eligible company shall on or before the 30th day of April of each year deposit the sum as specified in clause (c) of the said sub-section with any scheduled bank and the amount so deposited shall not be utilised for any purpose other than for the repayment of deposits. The amount remaining deposited shall not at any time fall below fifteen per cent. of the amount of deposits maturing, until the end of the current financial year and the next financial year.

Rule 14 - Registers of deposits

(1) Every company accepting deposits shall, from the date of such acceptance, keep at its registered office one or more separate registers for deposits accepted/renewed, in which there shall be entered separately in the case of each depositor the following particulars, namely:

(a) Name, address and PAN of the depositor/s;
(b) Particulars of guardian, in case of a minor;
(c) Particulars of the nominee;
(d) Deposit receipt number;
(e) Date and amount of each deposit;
(f) Duration of the deposit and the date on which each deposit is repayable;
(g) Rate of interest;
(h) Due date(s) for payment of interest;
(i) Mandate and instructions for payment of interest and for non-deduction of tax at source, if any;
(j) Date or dates on which payment of interest will be made;
(k) Details of deposit insurance including extent of deposit insurance;
(l) Particulars of other security/charge created;
(m) Any other particulars relating to the deposit;

(2) Entries in the register shall be made within seven days from the date of issuance of the deposit receipt and such entries shall be authenticated by a director or secretary of the company or by any other officer authorized by the Board for this purpose.

(3) The register or registers referred to in sub-rule (1) shall be preserved in good order for a period of not less than eight years from the financial year in which the latest entry is made in the register.

Rule 15 - General provisions regarding premature repayment of deposits

When a company makes a repayment of deposits, on the request of the depositor, after the expiry of a period of six months from the date of such deposit but before the expiry of the period for which such deposit was accepted, the rate of interest payable on such deposit shall be reduced by one per cent. from the rate which the company would have paid had the deposit been accepted for the period for which such deposit had actually run and the company shall not pay interest at any rate higher than the rate so reduced. Nothing contained in this rule shall apply to the repayment of any deposit before the expiry of the period for which such deposit was accepted by the company, if such repayment is made solely for the purpose of—
(a) complying with the provisions of rule 3; or

(b) providing war risk or other related benefits to the personnel of the naval, military or air forces or to their families, on an application made by the associations or societies formed by such personnel, during the period of emergency declared under article 352 of the Constitution:

When a company referred to in under sub-section (2) of section 73 or any eligible company permits a depositor to renew his deposit, before the expiry of the period for which such deposit was accepted by the company, for availing of a higher rate of interest, the company shall pay interest to such depositor at the higherrate if such deposit is renewed in accordance with the other provisions of these rules and for a period longer than the unexpired period of the deposit. For the purposes of this rule, where the period for which the deposit had run contains any part of a year, then, if such part is less than six months, it shall be excluded and if such part is six months or more, it shall be reckoned as one year.

Rule 16 - Return of deposits to be filed with the Registrar

Every company to which these rules apply, shall on or before the 30th day of June, of every year, file with the Registrar, a return in Form DPT-3 along with the fee as provided in Companies (Registration Offices and Fees) Rules, 2014 and furnish the information contained therein as on the 31st day of March of that year duly audited by the auditor of the company.

Rule 17 - Penal rate of interest

Every company shall pay a penal rate of interest of eighteen per cent. per annum for the overdue period in case of deposits, whether secured or unsecured, matured and claimed but remaining unpaid.

Rule 18 - Power of Central Government to decide certain questions

If any question arises as to the applicability of these rules to a particular company, such question shall be decided by the Central Government in consultation with the Reserve Bank of India.

Rule 19 - Applicability of sections 73, 74 and 75 to eligible companies

Pursuant to provisions of sub-section (2) of section 76 of the Act, the provisions of sections 73, 74 and 75 shall, mutatis mutandis, apply to acceptance of deposits from public by eligible companies.

It may be noted that

For the purposes of this rule, it is hereby clarified that in case of a company which had accepted or invited public deposits under the relevant provisions of the Companies Act, 1956 and rules made under that Act (hereinafter known as “Earlier Deposits”) and has been repaying such deposits and interest thereon in accordance with such provisions, the provisions of clause (b) of sub-section (1) of section 74 of the Act shall be deemed to have been complied with if the company complies with requirements under the Act and these rules and continues to repay such deposits and interest due thereon on due dates for the remaining period of such deposit in accordance with the terms and conditions and period of such Earlier Deposits and in compliance with the requirements under the Act and these rules. The fresh deposits by every eligible company shall have to be in accordance with the provisions of Chapter V of the Act and these rules; Without prejudice to above, in case of deposits accepted by an eligible company under section 76 of the Act, the provisions of sub- section (3) and (4) of section 73, provisions of sub-sections (2) and (3) of section 74 and provisions of section 75 shall be applicable irrespective of the fact that such deposits were not accepted by the company before the commencement of this Act.

Rule 21 - Punishment for contravention

If any company referred to in sub-section (2) of section 73 or any eligible company inviting deposits or any other person contravenes any provision of these rules for which no punishment is provided in the Act, the company and every officer of the company who is in default shall be punishable with fine which may extend to five thousand rupees and where the contravention is a continuing one, with a further fine which may extend to five hundred rupees for every day after the first day during which the contravention continues.
Conclusion

The provisions of Companies Act 2013 read with rules made under Chapter V, has brought several revamping aspects to protect the interest of depositors. The gist of provisions discussed above is as follows.

— Company may accept deposit from its members by passing a resolution in general meeting and subject to conditions as may be prescribed in the Rules including Credit rating, Deposit insurance etc.

— Public companies may accept deposits, if it has a net worth of not less than one hundred crore rupees or a turnover of not less than five hundred crore rupees and which has obtained the prior consent of the company in general meeting by means of a special resolution and also filed the said resolution with the Registrar of Companies and where applicable, with the Reserve Bank of India before making any invitation to the Public for acceptance of Deposits.

— No company under sub-section (2) of section 73 or any eligible company shall issue a circular or advertisement inviting secured deposits unless the company has appointed one or more deposit trustees for creating security for the deposits.

— Contract providing for deposit insurance at least thirty days before the issue of circular or advertisement.

— Companies accepting deposit from members or eligible companies as defined, has to fulfill the conditions specified in Companies(Acceptance of Deposits) Rules 2014.
APPONITMENT AND QUALIFICATIONS OF DIRECTORS*

Introduction

The supreme executive authority controlling the management and affairs of a company vests in the team of directors of the company, collectively known as its Board of Directors. At the core of the corporate governance practice is the Board of Directors which oversees how the management serves and protects the long term interests of all the stakeholders of the Company. The institution of board of directors was based on the premise that a group of trustworthy and respectable people should look after the interests of the large number of shareholders who are not directly involved in the management of the company. The position of board of directors is that of trust as the board is entrusted with the responsibility to act in the best interests of the company.

Although the Board comprises individual directors, yet the actions and deeds of directors individually functioning cannot bind the company, unless a particular director has been specifically authorised by a Board resolution to discharge certain responsibilities on behalf of the company.

The Companies Act, 2013 does not contain an exhaustive definition of the term “director”. Section 2 (34) of the Act prescribed that “director” means a director appointed to the Board of a company.

A director is a person appointed to perform the duties and functions of director of a company in accordance with the provisions of the Companies Act, 2013.

Board of Directors

A company, though a legal entity in the eyes of law, is an artificial person, existing only in contemplation of law. It has no physical existence. It has neither soul nor body of its own. As such, it cannot act in its own person. It can do so only through some human agency. The persons who are in charge of the management of the affairs of a company are termed as directors. They are collectively known as Board of Directors or the Board. The directors are the brain of a company. They occupy a pivotal position in the structure of the company. Directors take the decision regarding the management of a company collectively in their meetings known as Board Meetings or at the meetings of their committees constituted for certain specific purposes.

Section 2 (10) of the Companies Act, 2013 defined that “Board of Directors” or “Board”, in relation to a company, means the collective body of the directors of the company.

Minimum/Maximum Number of Directors in a Company- Section 149(1)

Section 149(1) of the Companies Act, 2013 requires that every company shall have a minimum number of 3 directors in the case of a public company, two directors in the case of a private company, and one director in the case of a One Person Company. A company can appoint maximum 15 fifteen directors. A company may appoint more than fifteen directors after passing a special resolution in general meeting and approval of Central Government is not required.

A period of one year has been provided to enable the companies to comply with this requirement.

* Topic for Discussion at Business Breakfast Session. Contents Reproduced from Souvenir of 9th International Conference held on July 06, 2014 at Malaysia. The views expressed in the discussion paper do not necessarily reflect those of the Institute.
Number of directorships - Section 165

Maximum number of directorships, including any alternate directorship a person can hold is 20. It has come with a rider that number of directorships in public companies/private companies that are either holding or subsidiary company of a public company shall be limited to 10. Further the members of a company may restrict abovementioned limit by passing a special resolution.

Any person holding office as director in more than 20 or 10 companies as the case may be before the commencement of this Act shall, within a period of one year from such commencement, have to choose companies where he wishes to continue/resign as director. Thereafter he shall intimate about his choice to concerned companies as well as concerned Registrar.

Such person shall not act as director in more than the specified number of companies after despatching the resignation or after the expiry of one year from the commencement of this Act, whichever is earlier.

If a person accepts an appointment as a director in contravention of above mentioned provisions, he shall be punishable with fine which shall not be less than Rs. 5,000 but which may extend to Rs. 25,000 for every day after the first day during which the contravention continues.

Residence of a director in India

Section 149 (3) of the Act has provided for residence of a director in India as a compulsory i.e. every company shall have at least one director who has stayed in India for a total period of not less than 182 days in the previous calendar year.

Woman Director

Every listed company shall appoint at least one woman director within one year from the commencement of the second proviso to Section 149(1) of the Act.

Every other public company having paid up share capital of Rs. 100 crores or more or turnover of Rs. 300 crore or more as on the last date of latest audited financial statements, shall also appoint at least one woman director within 1 years from the commencement of second proviso to Section 149(1) of the Act.

A period of six months from the date of company’s incorporation, has been provided to enable the companies incorporated under Companies Act, 2013 to comply with this requirement. It is better to say that existing companies (under the previous companies act) has to comply the above requirements within one year and new companies (under the new companies act) has to comply within 6 months from the date of its incorporation.

Further if there is any intermittent vacancy of a woman director then it shall be filled up by the board of directors within 3 months from the date of such vacancy or not later than immediate next board meeting, whichever is later.

(Rule 3 of Companies (Appointment and Qualification of Directors) Rules, 2014 hereinafter referred in this chapter as Rule)

Independent Directors

Section 2(47) of the Act prescribed that “Independent director” means an independent director referred to in sub section (5) of section 149 of the Act. In fact reference should have been made to sub section (6) of 149 as it specified the qualifications of independent director with clarity.
Every listed public company shall have at least one-third of the total number of directors as independent directors (fraction is to be rounded off to one). Central Government has prescribed under Rule 4, public companies with specified limits as on the last date of latest audited financial statements mentioned below shall also have at least 2 directors as independent directors:

- paid up share capital of Rs. 10 crore or more; or
- turnover of Rs. 100 crore or more; or
- in aggregate, outstanding loans/borrowings/debentures/deposits exceeding Rs. 50 crore or more.

In case a company covered under this rule is required appoint higher number of independents directors due to composition of its audit committee and then they shall appoint such higher number of independent directors.

Further if there is any intermittent vacancy of an independent director then it shall be filled up by the board of directors within 3 months from the date of such vacancy or not later than immediate next board meeting, whichever is later.

Once the company covered under above sub-rule (i) to (iii) of Rule 4, ceases to fulfil any of three conditions for three consecutive years then it shall not be required to comply these provisions until such time as it meets any of such conditions.

Definition of an Independent Director – Section 149 (6)

An independent director means a director other than a managing director or a whole-time director or a nominee director who does not have any material or pecuniary relationship with the company/directors. Section 149(6) of the Act prescribes the criteria for independent directors which are as follows:

(a) Who in the opinion of the Board, is a person of integrity and possesses relevant industrial expertise and experience;

(b) Such individual shall not be a promoter or related to promoter of the company or its holding, subsidiary or associate company;

(c) Such individuals must not have any material or pecuniary relationship during the two immediately preceding financial years or during the current financial year with the company or its promoters/directors/holding/subsidiary/associate company;

(d) The relatives of such person should not have had any pecuniary relationship with the company or its subsidiaries, amounting to 2% or more of its gross turnover or total income or Rs. 50 lacs or such higher amount as may be prescribed, whichever is less, during the two immediately preceding financial years or in the current financial year;

(e) He must not either directly or any of his relatives

(i) hold or has held the position of a key managerial personnel or is or has been employee of the company or its holding, subsidiary or associate company in any of the three financial years immediately preceding the financial year in which he is proposed to be appointed.

(ii) is or has been an employee or proprietor or a partner, in any of the three financial years immediately preceding the financial year in which he is proposed to be appointed, of—
(A) a firm of auditors or company secretaries in practice or cost auditors of the company or its holding, subsidiary or associate company; or

(B) any legal or a consulting firm that has or had any transaction with the company, its holding, subsidiary or associate company amounting to ten per cent. or more of the gross turnover of such firm;

(iii) holds together with his relatives two per cent or more of the total voting power of the company; or

(iv) is a Chief Executive or director, by whatever name called, of any non-profit organisation that receives 25% or more of its receipts from the company, any of its promoters, directors or its holding, subsidiary or associate company or that holds 2% or more of the total voting power of the company, then also he is not eligible for office of independent director; or

(f) who possesses such other qualifications as prescribed in Rule 5 as an independent director shall possess appropriate skills, experience and knowledge in one or more fields of finance, law, management, sales, marketing, administration, research, corporate governance, technical operations or other disciplines related to the company’s business.

Declaration by an Independent Director - Section 149(7)

Section 149 (7) of the Act, prescribed that every independent director shall give a declaration that he meets the criteria of independence when:

(a) he attends the first meeting of the Board as a director;

(b) thereafter at the first meeting of the Board in every financial year and

(c) whenever there is any change in the circumstances which may affect his status as an independent director.

Further “nominee director” means a director nominated by any financial institution in pursuance of the provisions of any law for the time being in force, or of any agreement, or appointed by any Government, or any other person to represent its interests.

Code of Conduct for an Independent Director and Company-Section 149 (8)

Section 149 (8) of the Act prescribed that the company and independent directors shall abide by the provisions specified in Schedule IV regarding code for independent directors. It is a guide to professional conduct for independent directors. Adherence to these standards by independent directors and fulfilment of their responsibilities in a professional and faithful manner will promote confidence of the investment community, particularly minority shareholders, regulators and companies in the institution of independent directors. Code of Conduct includes guidelines of professional conduct, role and functions, duties, manner of appointment, re-appointment, resignation or removal, separate meetings, evaluation mechanism.

Remuneration of an Independent Director- Section 149(9)

As per section 149 (9) of the Act an independent director shall not be entitled to any stock option. He may receive remuneration by way of sitting fee, reimbursement of expenses incurred for participation in the Board and other committee meetings and profit related commission as may be approved by the members as provided under section 197 (5) of the Act.
Appointment of an Independent Director - Section 149(10)

Subject to the provisions of Section 152, an independent director can be appointed for a term of up to five consecutive years on the Board. However, in case of his reappointment for further five years then special resolution passed in general meeting and disclosure of such appointment is made in the Board’s report shall be required. (Section 149 (10))

Further independent director can be considered for re-appointment after expiration of three years of ceasing to become an independent director but he must not be appointed/associated with the company directly or indirectly in any other capacity during the said period of three years. Any tenure of an independent director on the date of commencement of this Act is not considered for the above term. (Section 149 (11))

The provisions of retirement of directors by rotation are not applicable on Independent director. (Section 149 (13))

Further, in case of independent directors, the explanatory statement relating to their appointment should contain a declaration from the Board that in their opinion, the independent directors satisfy the conditions provided in the Act for such appointment. (proviso to Section 152 (5))

Liability of an Independent Director - Section 149 (12)

An independent director and a non-executive director except the promoter or key managerial personnel, shall be held liable only in respect of such acts of omission or commission by a company which had occurred with his knowledge, attributable through Board processes and with his consent or connivance or where he had not acted diligently.

Manner of selection of an Independent Director - Section 150

According to section 150 (1) of the Act, independent directors may be selected from a data bank of eligible and willing persons maintained by the agency (Any body, institute or association as may be authorised by Central Government). Such agency shall put data bank of independent directors on the website of Ministry of Corporate Affairs or any other notified website. Company must exercise due diligence before selecting a person from the data bank referred to above, as an independent director.

This section further stipulates that the appointment of independent directors has to be approved by members in a General meeting and the explanatory statement annexed to the notice must indicate justification for such appointment.

Rule 6 (2) prescribed that such data bank shall contain, the following details who is eligible and willing to be appointed as independent director:

(a) DIN (Director Identification Number);
(b) Name and surname in full;
(c) Income-tax PAN;
(d) Father’s/Mother’s/ Spouse’s name (if married);
(e) Date of Birth;
(f) Gender;
(g) Nationality;
(h) Occupation;
(i) Full Address with PIN Code (present and permanent)
(j) Phone number;
(k) E-mail id;
(l) Educational and professional qualifications;
(m) Experience / expertise, if any;
(n) Any legal proceedings initiated or pending against such person;
(o) List of limited liability partnerships in which he is or was a designated partner along with Name of the LLP, Nature of Industry; and Duration- with dates;
(p) List of companies in which he is or was director along with Name of the company; Nature of industry; Nature of directorship – Executive / Non-executive / Independent / Nominee Director; and Duration – with dates.

A disclaimer shall conspicuously be displayed on the website along with the databank that a company must carry out its own due diligence before appointment of any person as an independent director and the agency maintaining the databank or the Central Government shall not be responsible for accuracy of information or lack of suitability of the person whose particulars from part of the databank. {Rule 6(3)}

Any person who desires to get his name included in the data bank of independent directors shall make an application to the agency in Form DIR-1 Application for inclusion of name in the databank of Independent Directors which includes the personal, educational, professional, work experience, other Board details of the applicant {Rule 6(4)}. The agency may charge a reasonable fee from the applicant for inclusion of his name in the data bank of independent directors {Rule 6 (5)}. An existing or applicant of such data bank of independent directors shall intimate any changes in his particulars within fifteen days of such change to the agency {Rule 6 (6)}.

Rule 6 (7) prescribed that the databank posted on the website shall:

a. be accessible at the specified website;
b. be substantially identical to the physical version of the data bank;
c. be searchable on the parameters specified in rule 6 (2);
d. be presented in a format or formats convenient for both printing and viewing online; and
e. contain a link to obtain the software required to view / print the particulars free of charge.

Director elected by Small Shareholders - Section 151

According to section 151 of the Act every listed company may have one director elected by such small shareholders. For the purpose of this section, “small shareholder” means a shareholder holding shares of nominal value of not more than twenty thousand rupees or such other sum as may be prescribed.

Terms & Conditions for Small Shareholders’ Director

Rule 7 laid down the following terms and conditions for appointment of small shareholder’s director, which are as under:

i. A listed company, may upon notice of not less than 1000 or one-tenth of the total number of small shareholders, whichever is lower, have a small shareholders’ director elected by the small
shareholders. A listed company may suo moto opt to have a director representing small shareholders.

ii. The small shareholders intending to propose a person as a candidate for the post of small shareholder’s director shall leave a signed notice of their intention with the company at least 14 days before the meeting specifying the their details and proposed director’s details. The details include name, address, shares held and folio number etc. If the proposer does not hold any shares in the company, the details of shares held and folio number need not be specified in the notice.

iii. The notice shall be accompanied by a statement signed by the proposed director for the post of small shareholders’ director stating
   a. his Director Identification Number;
   b. that he is not disqualified to become a director under the Act; and
   c. his consent to act as a director of the company.

iv. If proposed director is qualified u/s 149 (6) for appointment as an independent director and has given declaration for his independence u/s 149 (7) then such director shall be considered as an independent director.

v. The director’s tenure as small shareholders’ director shall not exceed a period of 3 consecutive years and he shall not be liable to retire by rotation. Further he shall not be eligible for re-appointment after the expiry of his tenure.

vi. If the person is not eligible for appointment according to section 164, then he can’t be appointed as small shareholder’s director.

vii. Small shareholders’ director shall vacate the office if -
   a. he ceases to be a small shareholder, on and from the date of cessation;
   b. he incurs any of the disqualifications specified in section 164;
   c. the office of the director becomes vacant in pursuance of section 167;
   d. he ceases to meet the criteria of independence as provided section 149 (6).

viii. Simultaneously he shall not hold the office of small shareholders’ director in more than two companies. If second company is in competitive business or is in conflict with business of the first company the he shall not be appointed in second company.

ix. He shall directly or indirectly not be appointed or associated in any other capacity with the company for a period of 3 years from the date of cessation as a small shareholder’s director.

Appointment of Directors – Section 152

First Director

The first directors of most of the companies are named in their articles. If they are not so named in the articles of a company, then subscribers to the memorandum who are individuals shall be deemed to be the first directors of the company until the directors are duly appointed.
In the case of a One Person Company, an individual being a member shall be deemed to be its first director until the director(s) are duly appointed by the member in accordance with the provisions of Section 152.

General provisions relating to appointment of directors

1. Except as provided in the Act, every director shall be appointed by the company in general meeting.

2. Director Identification Number is compulsory for appointment of director of a company.

3. Every person proposed to be appointed as a director shall furnish his Director Identification Number and a declaration that he is not disqualified to become a director under the Act.

4. A person appointed as a director shall on or before the appointment give his consent to hold the office of director in physical form DIR-2 i.e. Consent to act as a director of a company.

   Company shall file Form DIR-12 (particulars of appointment of directors and KMP along with the form DIR-2 as an attachment within 30 days of the appointment of a director, necessary fee. {Rule8}

5. Articles of the Company may provide the provisions relating to retirement of all directors. If there is no provision in the article, then not less than two-thirds of the total number of directors of a public company shall be persons whose period of office is liable to determination by retirement by rotation and eligible to be reappointed at annual general meeting. Further independent directors shall not be included for the computation of total number of directors. At the annual general meeting of a public company one-third of such of the directors for the time being as are liable to retire by rotation, or if their number is neither three nor a multiple of three, then, the number nearest to one-third, shall retire from office. The directors to retire by rotation at every annual general meeting shall be those who have been longest in office since their last appointment.

   At the annual general meeting at which a director retires as aforesaid, the company may fill up the vacancy by appointing the retiring director or some other person thereto. If the vacancy of the retiring director is not so filled-up and the meeting has not expressly resolved not to fill the vacancy, the meeting shall stand adjourned till the same day in the next week, at the same time and place, or if that day is a national holiday, till the next succeeding day which is not a holiday, at the same time and place.

   If at the adjourned meeting also, the vacancy of the retiring director is not filled up and that meeting also has not expressly resolved not to fill the vacancy, the retiring director shall be deemed to have been re-appointed at the adjourned meeting, unless—

   (i) a resolution for the re-appointment of such director has been put to the meeting and lost;

   (ii) the retiring director has expressed his unwillingness to be so re-appointed;

   (iii) he is not qualified or is disqualified for appointment;

   (iv) a resolution, whether special or ordinary, is required for his appointment or re-appointment by virtue of any provisions of this Act; or

   (v) section 162 i.e. appointment of directors to be voted individually is applicable to the case.
Punishment - Section 159

If any individual or director of a company, contravenes any of the provisions of section 152/155/156 such individual or director of the company shall be punishable with imprisonment for a term which may extend to 6 months or with fine which may extend to Rs. 50,000 and where the contravention is a continuing one, with a further fine which may extend to Rs. 500 for every day after the first day during which the contravention continues.

Appointment of Additional Director - Section 161(1)

The board of directors can appoint additional directors, if such power is conferred on them by the articles of association. Such additional directors hold office only upto the date of next annual general meeting or the last date on which the annual general meeting should have been held, whichever is earlier. A person who fails to get appointed as a director in a general meeting cannot be appointed as Additional Director.

Appointment of Alternate Director- Section 161(2)

Section 161(2) of the Act allowed the followings:

(i) The Board of Directors of a company must be authorised by its articles or by a resolution passed by the company in general meeting for appointment of alternate director.

(ii) The person in whose place the Alternate Director is being appointed should be absent for a period of not less than 3 months from India.

(iii) The person to be appointed as the Alternate Director shall be the person other than the person holding any alternate directorship for any other Director in the Company.

(iv) If it is proposed to appoint an Alternate Director to an Independent Director, it must be ensured that the proposed appointee also satisfies the criteria for Independent Directors.

(v) An alternate director shall not hold office for a period longer than that permissible to the director in whose place he has been appointed and shall vacate the office if and when the director in whose place he has been appointed returns to India.

(vi) If the term of office of the original director is determined before he so returns to India, any provision for the automatic re-appointment of retiring directors in default of another appointment shall apply to the original, and not to the alternate director.

Appointment of Directors by Nomination Section 161(3)

This new sub-section now provides for appointment of Nominee Directors. It states that subject to the articles of a company, the Board may appoint any person as a director nominated by any institution in pursuance of the provisions of any law for the time being in force or of any agreement or by the Central Government or the State Government by virtue of its shareholding in a Government Company.

Appointment of Directors in causal vacancy - Section 161 (4)

If any vacancy is caused by death or resignation of a director appointed by the shareholders in General meeting, before expiry of his term, the Board of directors can appoint a director to fill up such vacancy. The appointed director shall hold office only up to the term of the director in whose place he is appointed.
Appointment of directors to be voted individually - Section 162(1)

A single resolution shall not be moved for the appointment of two or more persons as directors of the company unless a proposal to move such a motion has first been agreed to at the meeting without any vote being cast against it.

A resolution moved in contravention of aforesaid provision shall be void, whether or not any objection was taken when it was moved. A motion for approving a person for appointment, or for nominating a person for appointment as a director, shall be treated as a motion for his appointment.

Proportional representation for appointment of directors - Section 163

The articles of a company may provide for the appointment of not less than two-thirds of the total number of the directors of a company in accordance with the principle of proportional representation, whether by the single transferable vote or by a system of cumulative voting or otherwise and such appointments may be made once in every three years and casual vacancies of such directors shall be filled as provided in sub-section (4) of section 161.

Right of persons other than retiring directors to stand for directorship- Section 160

A person who is not a retiring director shall be eligible for appointment to the office of a director at any general meeting, if he, or some member intending to propose him as a director, has, not less than fourteen days before the meeting, left at the registered office of the company, a notice in writing under his hand signifying his candidature as a director or, as the case may be, the intention of such member to propose him as a candidate for that office, along with the deposit of one lakh rupees or such higher amount as may be prescribed which shall be refunded to such person or, as the case may be, to the member, if the person proposed gets elected as a director or gets more than 25% of total valid votes cast either on show of hands or on poll on such resolution.

Notice of candidature of a person for directorship- Section 160(2) and Rule 13

The company shall inform its members of the candidature of a person for the office of a director or the intention of a member to propose such person as a candidate for that office, at least seven days before the general meeting by serving individual notices to members through e-mail and where no e-mail address is available then in writing and by placing notice of such candidature or intention on the website of the company, if any.

If the company advertises such candidature/intention, not less than 7 days before the meeting at least once in a vernacular newspaper in the principal vernacular language of the registered office’s district and at least once in English language in an English newspaper circulating in that district in which the registered office of the company is situated, then it shall not be required to serve individual notices upon the members as aforesaid.

Directors Identification Number (DIN)

Procedure for application for allotment of DIN - Section 153 & Rule 9

1. Every individual, who is to be appointed as director of a company shall make an application electronically in Form DIR-3 (Application for allotment of Director Identification Number) to the Central Government for the allotment of a Director Identification Number (DIN).

2. The Central Government shall provide an electronic system to facilitate submission of application for the allotment of DIN through the portal on the website of the Ministry of Corporate Affairs.
(3) (a) The applicant shall download Form DIR-3 from the portal, fill in the required particulars and attaching photograph; proof of identity; proof of residence; and verification by the applicant in Form DIR-4, specimen signature duly verified and sign the form digitally.

(b) Form DIR-3 shall be signed and submitted electronically by the applicant using his or her own Digital Signature Certificate and shall be verified digitally by:

(i) a chartered accountant or a company secretary in practice or a cost accountant; or

(ii) a company secretary in full time employment of the company or by the managing director or director of the company in which the applicant is to be appointed a director;

Procedure for Allotment of DIN- Section 154 and Rule 10

The Central Government shall, within one month from the receipt of the application under section 153, allot a Director Identification Number to an applicant in such manner as mentioned below:

(1) On the submission of the Form DIR-3 on the portal and payment of the requisite amount of fees through online mode the provisional DIN shall be generated by the system automatically which shall not be utilized till the DIN is confirmed by the Central Government.

(2) After generation of the provisional DIN, the Central Government shall process the application. It may approve or reject the application and communicate the same to the applicant within a period of one month from the receipt of application. The such communication may be sent by post or electronically or in any other mode.

(3) If the Central Government, on examination, finds such application to be defective or incomplete in any respect, it shall give intimation of such defect or incompleteness, by placing it on the web site and by email to the applicant who has filed such application, directing the applicant to rectify such defects or incompleteness by resubmitting the application within a period of fifteen days of such placing on the website and email:

Provided that Central Government shall:

(a) reject the application and direct the applicant to file fresh application with complete and correct information, where the defect has been rectified partially or the information given is still found to be defective;

(b) treat and label such application as invalid in the electronic record in case the defects are not removed within the given time; and

(c) Inform the applicant either by way of letter by post or electronically or in any other mode.

(4) In case of rejection or invalidation of application, the provisional DIN so allotted by the system shall get lapsed automatically and the fee so paid with the application shall neither be refunded nor adjusted with any other application.

(5) All Director Identification Numbers allotted to individual(s) by the Central Government before the commencement of these rules shall be deemed to have been allotted to them under these rules.

(6) The Director Identification Number so allotted under these rules is valid for the life-time of the applicant and shall not be allotted to any other person.
Cancellation/Surrender/Deactivation of DIN – Rule 11

The Competent Authority (Central Government/RD (North), Noida/ Authorised Officer by the RD) may, upon being satisfied on verification of particulars or documentary proof attached with the application received from any person, cancel or deactivate the DIN in case –

(a) the DIN is found to be duplicated in respect of the same person provided the data related to both the DIN shall be merged with the validly retained number;

(b) the DIN was obtained in a wrongful manner or by fraudulent means;

(c) of the death of the concerned individual;

(d) the concerned individual has been declared as a lunatic or of unsound mind by a competent Court;

(e) if the concerned individual has been adjudicated an insolvent.

Provided that before cancellation or deactivation of DIN pursuant to clause (b), an opportunity of being heard shall be given to the concerned individual;

(f) on an application made in Form DIR-5 by the DIN holder to surrender his or her DIN along with declaration that he has never been appointed as director in any company and the said DIN has never been used for filing of any document with any authority, the Central Government may deactivate such DIN but after verification of e-records.

Intimation of changes in particulars of Director - Rule 12

(1) Every director having DIN in the event of any change in his particulars as stated in Form DIR-3, intimate such change(s) to the Central Government within a period of 30 days of such change(s) in Form DIR-6 (Intimation of change in particulars of Director to be given to the Central Government). DIR-6 will be filed along copy of the proof of the changed particulars and verification in the Form DIR-7 (Verification of applicant for change in DIN particulars) all of which shall be scanned, signed digitally by applicant and submitted electronically. Form requires pre-certification by the professional CA/CS/CMA in practice.

(2) The Central Government shall incorporate the said changes in the electronic database after due verification from the enclosed proofs and confirm the applicant by post/email/any other mode.

(3) The DIN cell of the MCA shall also intimate the change(s) in the particulars of the director submitted to it in Form DIR-6 to the concerned Registrar(s) under whose jurisdiction the registered office of the company(s) in which such individual is a director is situated.

(4) The concerned individual shall also intimate the change(s) in his particulars to the company or companies in which he is a director within fifteen days of such change.

General Provisions regarding DIN

According to Section 155, No individual shall apply for/obtain/possess another Director Identification Number who has already been allotted a Director Identification Number under section 154.

Section 156 stipulated that Every existing director shall intimate his DIN to the company or all companies wherein he is a director within 1 month of the receipt of DIN from the Central Government.
Section 157 (1) of the Act stipulated that every company shall, within fifteen days of the receipt of intimation under section 156, furnish the DIN of all its directors to the Registrar/authorised office by the Central Government. every such intimation shall be furnished in such form and manner as may be prescribed.

If a company fails to furnish Director Identification Number under section 157 (1), before the expiry of the 270 days period from the date by which it should have been furnished with additional fee, the company shall be punishable with fine which shall not be less than Rs. 25,000 but which may extend to Rs. 1,00,000 and every officer of the company who is in default shall be punishable with fine which shall not be less than Rs. 25,000 but which may extend to Rs. 1,00,000.

Section 158 specified that every person or company shall mention the DIN in return, information or particulars as required to be furnished under this act, in case such return etc relate to the director or contain any reference of any director.

**Disqualifications for appointment of director - Section 164**

(1) A person shall not be eligible for appointment as a director of a company, if —

(a) he is of unsound mind and stands so declared by a competent court;

(b) he is an undischarged insolvent;

(c) he has applied to be adjudicated as an insolvent and his application is pending;

(d) he has been convicted by a court of any offence, whether involving moral turpitude or otherwise, and sentenced in respect thereof to imprisonment for not less than six months and a period of five years has not elapsed from the date of expiry of the sentence.

If a person has been convicted of any offence and sentenced in respect thereof to imprisonment for a period of seven years or more, he shall not be eligible to be appointed as a director in any company;

(e) an order disqualifying him for appointment as a director has been passed by a court or Tribunal and the order is in force;

(f) he has not paid any calls in respect of any shares of the company held by him, whether alone or jointly with others, and six months have elapsed from the last day fixed for the payment of the call;

(g) he has been convicted of the offence dealing with related party transactions under section 188 at any time during the last preceding five years; or

(h) he has not got the DIN.

An additional disqualification is provided in sub section (2) of Section 164 relating to consequences of non filing of financial statements or annual returns. Any person who is or has been director of any company which has not filed any financial statements and Annual Return for 3 continuous financial year or has defaulted in payment of debentures/deposit/dividend etc, shall also not be eligible for appointment as director of any public company and for re-appointment in the same company for a period of five years from the date on which the said company fails to do so.

Rule 14 prescribed that every director who disqualified u/s 164 (2), shall inform to the company concerned in Form DIR-8 (Intimation by Director) before he is appointed or re-appointed. Whenever a company fails to file the financial statements/annual returns/fails to repay any deposit, interest, dividend/fails to redeem its debentures as specified u/s 164 (2), the company shall immediately file Form DIR-9 (Report by the company to Registrar), to the Registrar furnishing therein the names and
addresses of all the directors of the company during the relevant financial years. But when a company fails to file the Form DIR-9 within a period of 30 days of the failure it would attract the disqualification u/s 164(2), officers of the company as specified u/s 2(60) shall be the officers in default. Upon receipt of the Form DIR-9 the Registrar shall immediately register the document and place it in the document file for public inspection. Any application for removal of disqualification of directors shall be made in Form DIR-10.

(3) A private company may by its articles provide for any disqualifications for appointment as a director in addition to aforesaid mentioned

Provided that the disqualifications referred to in clauses (d), (e) and (g) of sub-section (1) shall not take effect—

(i) for thirty days from the date of conviction or order of disqualification;
(ii) where an appeal or petition is preferred within thirty days as aforesaid against the conviction resulting in sentence or order, until expiry of seven days from the date on which such appeal or petition is disposed off; or
(iii) where any further appeal or petition is preferred against order or sentence within seven days, until such further appeal or petition is disposed off.

**Duties of directors - Section 166**

For the first time, duties of directors have been defined in the Act. A director of a company shall:

— Act in accordance with the articles of the company.
— Act in good faith in order to promote the objects of the company for the benefit of its members as a whole, and in the best interests of the company, its employees, the shareholders, the community and for the protection of environment.
— Exercise his duties with due and reasonable care, skill and diligence and shall exercise independent judgment.
— Not involve in a situation in which he may have a direct or indirect interest that conflicts, or possibly may conflict, with the interest of the company.
— Not achieve or attempt to achieve any undue gain or advantage either to himself or to his relatives, partners, or associates and if such director is found guilty of making any undue gain, he shall be liable to pay an amount equal to that gain to the company.
— Not assign his office and any assignment so made shall be void.

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 Rs. 1,00,000 but which may extend to Rs. 5,00,000.

**Vacation of office of director - Section 167**

The office of a director shall become vacant in case—

(a) He incurs any of the disqualifications specified in section 164;
(b) He absents himself from all the meetings of the Board of Directors held during a period of twelve months with or without seeking leave of absence of the Board;
(c) He acts in contravention of the provisions of section 184 relating to entering into contracts or arrangements in which he is directly or indirectly interested;
(d) He fails to disclose his interest in any contract or arrangement in which he is directly or indirectly interested

(e) He becomes disqualified by an order of a court or the Tribunal;

(f) He is convicted by a court of any offence, whether involving moral turpitude or otherwise and sentenced in respect thereof to imprisonment for not less than 6 months;

Provided that the office shall be vacated by the director even if he has filed an appeal against the order of such court;

(g) He is removed in pursuance of the provisions of this Act;

(h) He, having been appointed a director by virtue of his holding any office or other employment in the holding, subsidiary or associate company, ceases to hold such office or other employment in that company.

If a person, functions as a director even when he knows that the office of director held by him has become vacant on account of any of the disqualifications specified above, he shall be punishable with imprisonment for a term which may extend to 1 year or with fine which shall not be less than Rs. 1,00,000 but which may extend to Rs. 5,00,000 or with both.

Where all the directors of a company vacate their offices under any of the disqualifications specified above the promoter or, in his absence, the Central Government shall appoint the required number of directors who shall hold office till the directors are appointed by the company in the general meeting.

A private company may, by its articles, provide any other ground for the vacation of the office of a director in addition to those specified above.

**Resignation of director - Section 168 & Rule 15, 16**

A director may resign from his office by giving notice in writing. The Board shall, on receipt of such notice within 30 days intimate the Registrar in Form DIR-12 and also place the fact of such resignation in the Directors’ Report of subsequent general meeting of the company and post the information on its website. The director shall also forward a copy of resignation alongwith detailed reasons for the resignation to the Registrar in Form DIR-11 within 30 days from the date of resignation. The notice shall become effective from the date on which the notice is received by the company or the date, if any, specified by the director in the notice, whichever is later. Provided that the director who has resigned shall be liable even after his resignation for the offences which occurred during his tenure.

If all the directors of a company resign from their office or vacate their office, the promoter or in his absence the Central Government shall appoint the required number of directors to hold office till the directors are appointed by the company in General Meeting.

**Removal of directors - Section 169**

A company may, remove a director except the director appointed by National Company Law Tribunal u/s 242, before the expiry of the period of his office after giving him a reasonable opportunity of being heard after passing the ordinary resolution.

Provided that nothing contained in this sub-section shall apply where the company has availed itself of the option given to it under section 163 to appoint not less than two thirds of the total number of directors according to the principle of proportional representation.
A special notice shall be required of any resolution, to remove a director under this section, or to appoint somebody in place of a director so removed, at the meeting at which he is removed.

On receipt of notice of a resolution to remove a director under this section, the company shall forthwith send a copy thereof to the director concerned, and the director, whether or not he is a member of the company, shall be entitled to be heard on the resolution at the meeting.

Where notice has been given of a resolution to remove a director under this section and the director concerned makes with respect thereto representation in writing to the company and requests its notification to members of the company, the company shall, if the time permits it to do so,—

(a) in any notice of the resolution given to members of the company, state the fact of the representation having been made; and

(b) send a copy of the representation to every member of the company to whom notice of the meeting is sent (whether before or after receipt of the representation by the company), and if a copy of the representation is not sent as aforesaid due to insufficient time or for the company's default, the director may without prejudice to his right to be heard orally require that the representation shall be read out at the meeting.

Provided that copy of the representation need not be sent out and the representation need not be read out at the meeting if, on the application either of the company or of any other person who claims to be aggrieved, the Tribunal is satisfied that the rights conferred by this sub-section are being abused to secure needless publicity for defamatory matter; and the Tribunal may order the company’s costs on the application to be paid in whole or in part by the director notwithstanding that he is not a party to it.

A vacancy created by the removal of a director under this section may, if he had been appointed by the company in general meeting or by the Board, be filled by the appointment of another director in his place at the meeting at which he is removed, provided special notice of the intended appointment has been given under sub-section (2).

A director so appointed shall hold office till the date up to which his predecessor would have held office if he had not been removed.

If the vacancy is not filled under sub-section (5), it may be filled as a casual vacancy in accordance with the provisions of this Act:

Provided that the director who was removed from office shall not be re-appointed as a director by the Board of Directors.

Nothing in this section shall be taken—

(a) as depriving a person removed under this section of any compensation or damages payable to him in respect of the termination of his appointment as director as per the terms of contract or terms of his appointment as director, or of any other appointment terminating with that as director; or

(b) as derogating from any power to remove a director under other provisions of this Act.

Register of Key Managerial Personnel—Section 170 (1) & Rule 17

Every company shall keep at its registered office a register of its directors and key managerial personnel containing the following particulars:-
(a) Director Identification Number (Optional for KMP);
(b) present name and surname in full;
(c) any former name or surname in full;
(d) father’s name, mother’s name and spouse’s name (if married) and surnames in full;
(e) date of birth;
(f) residential address (present as well as permanent);
(g) nationality (including the nationality of origin, if different);
(h) occupation;
(i) date of the board resolution in which the appointment was made;
(j) date of appointment and reappointment in the company;
(k) date of cessation of office and reasons therefor;
(l) office of director or key managerial personnel held or relinquished in any other body corporate;
(m) membership number of the Institute of Company Secretaries of India in case of Company Secretary;
(n) PAN mandatory for KMP who is not having DIN

In addition to the details of the directors or key managerial personnel, the company shall also include in the aforesaid Register the details of securities held by them in the company, its holding company, subsidiaries, subsidiaries of the company’s holding company and associate companies relating to:

(a) the number, description and nominal value of securities;
(b) the date of acquisition and the price or other consideration paid;
(c) date of disposal and price and other consideration received;
(d) cumulative balance and number of securities held after each transaction;
(e) mode of acquisition of securities;
(f) mode of holding – physical or in dematerialized form; and
(g) whether securities have been pledged or any encumbrance has been created on the securities.

Return of Key Managerial Personnel- Section 170(2) & Rule 18

A return containing the particulars of appointment of director or key managerial personnel and changes therein, shall be filed with the Registrar in Form DIR-12 within 30 days of such appointment or change, as the case may be.

Members’ right to inspect- Section 171

The register of Key Managerial Personnel kept u/s 170(1) shall be open for inspection during business hours. The members shall have a right to take extracts therefrom and copies thereof, on a
request by the members, be provided to them free of cost within thirty days; and it shall also be kept open for inspection at every AGM so that any person attending the meeting can access the register.

If any inspection as provided above is refused, or if any copy required under that clause is not sent within thirty days from the date of receipt of such request, the Registrar shall on an application made to him order immediate inspection and supply of copies required thereunder.

**Punishment- Section 172**

If a company contravenes any of the provisions of this Chapter and for which no specific punishment is provided therein, the company and every officer of the company who is in default shall be punishable with fine which shall not be less than Rs. 50,000 but which may extend to Rs. 5,00,000.
ICSI CAPITAL MARKETS PROGRAMME

on

CAPITAL MARKET - THE GROWTH ENGINE

Day & Date : Monday, August 04, 2014
Venue: BSE International Convention Hall, Mumbai

Registration: 9.30 am
Delegate Fee: Rs. 843/- including service tax

Four PCH for ICSI Members
Eight PDP for ICSI Students

Capital Market has emerged as the modern engine of growth. However, the trust fuels this engine – trust bonds the investors in and issuers of securities. We need to build and maintain the trust of the stakeholders in capital market to herald the “Ache Din”. We need to do so with minimum government, but maximum governance.

In order to appreciate the role of capital market in the society, the economy and the country, and also the role of various stakeholders such as government, regulators, intermediaries, companies, investors, professionals, company secretaries, etc. in capital market and to provide an opportunity to learn from deliberations of thought leaders on the likely reforms path and prepare for the challenges and opportunities of tomorrow, the Institute of Company Secretaries of India has been organizing programmes on capital markets over the years.

We are pleased to inform you that the ICSI in association with BSE IPF has scheduled a Programme on the theme ‘Capital Market: The Growth Driver’ on Monday, the August 04, 2014 at BSE International Convention Hall, BSE Limited, Mumbai covering the following:

Theme: Capital Market – The Growth Engine

Sub themes: Market Development Market Regulation Investor Protection

Chief Guest
Mr. U. K. Sinha, Chairman, Securities and Exchange Board of India

Guest of Honour
Mr. Ashishkumar Chauhan, MD & CEO, BSE Ltd.

Eminent Faculty
Other Eminent Faculty comprising Regulators, Executives and professionals having extensive exposure in chosen areas who will also address the participants on the occasion includes S/shri Prashant Saran, Whole Time member, SEBI; Gyan Bhushan, Executive Director, SEBI; Sandip Ghosh, Director, NISM; Somasekhar Sundaresan, Advocate, J. Sagar & Associates; Himanshu Kaji, ED and Group COO, Edelweiss.

Programme Director
CS Atul H. Mehta
Council Member, ICSI & Chairman, Financial Services Committee

Registration
You may Register online by clicking on the following link:
https://www.eventavenue.com/attrReglogin.do?eventId=EVT5051

OR Request for Registration may be sent in the enclosed proforma along with demand draft/cheque for Rs. 843/- (inclusive of service tax) per participant to Deputy Director, WIRC of the ICSI, 13, Jolly Maker Chambers No.2 (First Floor) and Nos. 56 & 57 (Fifth Floor), Nariman Point, Mumbai - 400 021. Tel: 022-22844073; Mobile: 9769133686; E-mail: kailash.kaushik@icsi.edu
Registration Form

Delegate Details

| Sr. No. | Delegate Name | Designation & Organization | Address & Mobile No. | E-mail ID | ACS/FCS/PCS Number/Regn. No. if applicable | Delega
te Fee |
<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Please complete this form & return along with delegate(s) fee in Cash/Cheque/DD and send it at the following address:

Deputy Director
WIRC of the ICSI
13, Jolly Maker Chambers No. 2 (First Floor) and Nos. 56 & 57 (Fifth Floor)
Nariman Point, Mumbai-400 021
Tel: 022-22844073; Mobile: 9769133686;
E-mail: kailash.kaushik@icsi.edu

Particulars of Payment

Cash/Cheque/DD No. _______________ dated _____________ for Rs. ___________ in favour of ‘WIRC of the ICSI’ payable at Mumbai towards participation fee is enclosed. OR

For online registration please click on the following link:
https://www.eventavenue.com/attReglogin.do?eventId=EVT5051

Date: ________________________________ Signature: ________________________________
# 42nd National Convention of Company Secretaries

**Dates:** 21-22-23 August, 2014  
**Venue:** Science City, Dhapa, Kolkata  
**Theme:** CS – Change. Challenge. Opportunity

## Delegate Fee

<table>
<thead>
<tr>
<th>Type of Delegate</th>
<th>Early Birds (Payment Received upto 10.08.2014) Inclusive of Service Tax</th>
<th>Others (Payment Received after 10.08.2014) Inclusive of Service Tax</th>
</tr>
</thead>
<tbody>
<tr>
<td>Members of ICSI/ICAI/ICAI-CMA</td>
<td>Rs. 7000</td>
<td>Rs. 7500</td>
</tr>
<tr>
<td>Company Secretaries in Practice</td>
<td>Rs. 6500</td>
<td>Rs. 7000</td>
</tr>
<tr>
<td>Non-Members</td>
<td>Rs. 7500</td>
<td>Rs. 8000</td>
</tr>
<tr>
<td>Senior Members (60 years &amp; above)</td>
<td>Rs. 6000</td>
<td>Rs. 6500</td>
</tr>
<tr>
<td>Students</td>
<td>Rs. 6250</td>
<td>Rs. 6750</td>
</tr>
<tr>
<td>Spouse/ Accompanying Guest / Children</td>
<td>Rs. 6000</td>
<td>Rs. 6500</td>
</tr>
<tr>
<td>Foreign Delegates</td>
<td>$ 200</td>
<td>$ 250</td>
</tr>
</tbody>
</table>

For Registration and other details please visit [www.icsi.edu/42nc.aspx](http://www.icsi.edu/42nc.aspx).

---

**Vision:**  
To be a global leader in promoting good corporate governance

**Mission:**  
To develop high calibre professionals facilitating good corporate governance

---

**THE INSTITUTE OF Company Secretaries of India**  
*In Pursuit Of Professional Excellence*  
Statutory body under an Act of Parliament  
**Headquarters**  
ICSI House, 22, Institutional Area, Lodi Road, New Delhi-110003  
*Tel:* 011-4534 1000, 4150 4444  
*Fax:* +91-11-2462 6727  
*E-mail:* info@icsi.edu  
*Website:* [www.icsi.edu](http://www.icsi.edu)  
[www.icsi.in](http://www.icsi.in)