



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

## **SUPPLEMENT FOR PROFESSIONAL PROGRAMME**

### **New Syllabus**

- Advanced Company Law and Practice
- Secretarial Audit, Compliance Management and Due Diligence
- Ethics, Governance and Sustainability

### **Old Syllabus**

- Company Secretarial Practice
- Due Diligence and Corporate Compliance Management
- Governance, Business Ethics and Sustainability

This supplement is for the Professional. The students are advised to read their Study Material along with these updates. These academic updates are to facilitate the students to acquaint themselves with the amendments in various laws and regulatory prescriptions upto December 2015, applicable for June 2016 Examination. The students are advised to read all the relevant regulatory amendments made and applicable upto December 2015 alongwith the study material. In the event of any doubt, students may write to the Institute for clarifications at *academics@icsi.edu*

Kind attention : The updated study incorporating all the Notifications/Rules/Circulars covered in this supplement in respect of the following are also available at ICSI website : [www.icsi.edu](http://www.icsi.edu)

1. Advanced Company Law & Practice
2. Secretarial Audit, Compliance Management and Due Diligence
3. Ethics, Governance and Sustainability

***Students may also refer the updated study material***

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# BROAD CONTENTS AND THE RELATED SUBJECTS

## PROFESSIONAL PROGRAMME

<b>S.No.</b>	<b>Particulars</b>	<b>Subject</b>
1.	1. Companies Act, 2013 and the rules made thereunder 2. Secretarial Standards	<b>New Syllabus</b> <ul style="list-style-type: none"> <li>• Advanced Company Law and Practice</li> <li>• Secretarial Audit, Compliance Management and Due Diligence</li> <li>• Ethics, Governance and Sustainability</li> </ul> <b>Old Syllabus</b> <ul style="list-style-type: none"> <li>• Company Secretarial Practice</li> <li>• Due Diligence and Corporate Compliance Management</li> <li>• Governance, Business Ethics and Sustainability</li> </ul>
2	SEBI (LODR) Regulations, 2015	<b>New Syllabus</b> <ul style="list-style-type: none"> <li>• Advanced Company Law and Practice</li> <li>• Secretarial Audit, Compliance Management and Due Diligence</li> <li>• Ethics, Governance and Sustainability</li> </ul> <b>Old Syllabus</b> <ul style="list-style-type: none"> <li>• Company Secretarial Practice</li> <li>• Due Diligence and Corporate Compliance Management</li> <li>• Governance, Business Ethics and Sustainability</li> </ul>
3.	SEBI (Prohibition of Insider Trading) Regulations, 2015	<b>New Syllabus</b> <ul style="list-style-type: none"> <li>• Secretarial Audit, Compliance Management and Due Diligence</li> <li>• Ethics, Governance and Sustainability</li> </ul> <b>Old Syllabus</b> <ul style="list-style-type: none"> <li>• Due Diligence and Corporate Compliance Management</li> <li>• Governance, Business Ethics and Sustainability</li> </ul>
4	ASX Corporate Governance Council Principles and Recommendations, 2014	<b>New Syllabus</b> <ul style="list-style-type: none"> <li>• Ethics, Governance and Sustainability</li> </ul>

		<p><b>Old Syllabus</b></p> <ul style="list-style-type: none"> <li>• Governance, Business Ethics and Sustainability</li> </ul>
5	The Depository Receipts Scheme, 2014	<p><b>New Syllabus</b></p> <ul style="list-style-type: none"> <li>• Secretarial Audit, Compliance Management and Due Diligence</li> </ul> <p><b>Old Syllabus</b></p> <ul style="list-style-type: none"> <li>• Due Diligence and Corporate Compliance Management</li> </ul>

**AMENDMENT RULES/CIRCULARS/NOTIFICATIONS/ORDERS IN A NUTSHELL**  
(From July 2014 to January 2016)

<b>CHAPTER I</b>	
<b>PRELIMINARY</b>	
<i>Amendment Rules/Circulars/Notifications/Orders/ and Particular</i>	<i>Description</i>
The Companies (Removal of difficulties) Fifth Order, 2014 dated 9 <sup>th</sup> July, 2014 pertaining to Section 2(76).	Amendment of section 2 of the Companies Act 2013, In sub-clause (v) of clause (76) of section 2 for the words “or holds”, the words “and holds” shall be substituted.
Companies (Removal of difficulties) sixth order dated 24/07/2014- Removal of difficulty regarding the interpretation of clause (76) of section 2, definition of related party	<p>Amendment of section 2 of the Companies Act 2013, in clause (76), in sub-clause (iv), after the word “manager”, the word “or his relative” shall be inserted.</p> <p>Accordingly the amended definition of related party under Section 2(76) is as follows:</p> <p>Section 2(76) of the Companies Act 2013 as notified on September 12, 2013 defines “related party”, with reference to a company, means—</p> <ul style="list-style-type: none"> <li>(i) a director or his relative;</li> <li>(ii) a key managerial personnel or his relative;</li> <li>(iii) a firm, in which a director, manager or his relative is a partner;</li> <li>(iv) a private company in which a director or manager <u>or his relative is</u> a member or director;</li> <li>(v) a public company in which a director or manager is a director <u>and</u> holds along with his relatives, more than two per cent. of its paid-up share capital;</li> <li>(vi) any body corporate whose Board of Directors, managing director or manager is accustomed to act in accordance with the advice, directions or instructions of a director or manager;</li> <li>(vii) any person on whose advice, directions or instructions a director or manager is accustomed to act:</li> </ul> <p>Provided that nothing in sub-clauses (vi) and (vii) shall apply to the advice, directions or instructions given in a professional capacity;</p> <ul style="list-style-type: none"> <li>(viii) any company which is—</li> </ul>

<i>Amendment Rules/Circulars/Notifications/Orders/ and Particular</i>	<i>Description</i>
Companies (Specification of Definition Details) Amendment Rules dated July 17, 2014 - Amendment in rule 3 of Companies (Specification of Definition Details) Rules, 2014	<p>(A) a holding, subsidiary or an associate company of such company; or</p> <p>(B) a subsidiary of a holding company to which it is also a subsidiary;</p> <p>(ix) such other person as may be prescribed;</p> <p>After the words 'a director' the words 'other than an independent director' shall be inserted</p>
The Companies (Removal of difficulties) Order, 2015 dated 13th February, 2015 (amended the definition small company)	Amended 2(85) by substituting the word "Or" occurring between clause sub-clause (i) and (ii) of with the word "and" .
<b>CHAPTER-II</b> <b>INCORPORATION OF COMPANY AND MATTERS INCIDENTAL THERETO</b>	
General Circular No. 29/2014 dated 11/07 /2014- Registration of names of the companies shall be in consonance with the provision of the Emblems and Names (Prevention of Improper Use) Act, 1950.	While allotting names to the companies/LLPs, the concerned Registrar of Companies should ensure that the names are not in contravention of the provisions of the Emblems and Names (Prevention of Improper use) Act, 1950.
Companies (Incorporation) Amendment Rules, 2015 dated 1st May, 2015.	Introduction of the concept of Integrated Incorporation.
Companies (Incorporation) Second Amendment Rules, 2015 dated 29th May, 2015.	<p>In Rule 12 the proviso with respect to the companies whose objects requires approval of any Sectoral Regulator shall obtain such registration and Approval before pursuing such Objects and the requirement for Declaration to be submitted at the stage of incorporation of the company was inserted.</p> <ul style="list-style-type: none"> <li>- Rule 24 with respect to Declaration at the time of Commencement of Business and filling requirement of Form INC-21 Omitted.</li> <li>- Existing Form INC- 13 and INC-16 Substituted with new Form INC-13 and Form INC-16.</li> </ul>
MCA Notification No. S.O. 3388(E) dated 14th December 2015	Provision of sections 13 and 14 of Companies Act, 2013 has come into force from 14 <sup>th</sup> December, 2015
MCA Notification No. S.O. 218(E) dated 22nd January 2016	Central Government has established a Central Registration Centre (CRC) having territorial jurisdiction all over India, being administered by ROC, Delhi, for discharging or carrying out the function of processing and disposal of applications for reservation of names made in E-Form INC-1.



<i>Amendment Rules/Circulars/Notifications/Orders/ and Particular</i>	<i>Description</i>
	Processing and approval of name or names proposed in e-Form No. INC-29 shall continue to be done by the respective Registrar of Companies having jurisdiction over incorporation of companies under the Companies Act, 2013. This notification has come into force from 26th January, 2016.
Companies (Incorporation) Amendment Rules, 2016 dated 22 <sup>nd</sup> January, 2016	<p>In Companies (Incorporation) Amendment Rules, 2014 in rule 8,</p> <p>(i) sub rule (2)</p> <p>(a) sub-clause (ii) of clause (b) has been omitted;</p> <p>(b) sub-clause (x) of clause (b) has been omitted; and</p> <p>(c) sub-clause (xvii) of clause (b) has been omitted.</p> <p>(ii) sub-rule (3) has been omitted.</p> <p>(iii) sub-rule (a) has been omitted.</p> <p>– Rule 9 has been substituted with the following Reservation of name –</p> <p>An application for the reservation of a name shall be made in Form No. INC.1 along with the fee as provided in the Companies (Registration Offices and Fees) Rules, 2014 which may be approved or rejected, as the case may be, by the Registrar, Central Registration Centre.</p> <p>– in rule 36, sub-rule (12) after sub-clause (b)</p> <p>– the following shall be inserted.-</p> <p>(i) (ba) After the resubmission of the documents and on completion of second opportunity, if the registrar still finds that the documents are defective or incomplete, he shall give third opportunity to remove such defects or deficiencies;</p> <p>Provided that the total period for re-submission of documents shall not exceed a total period of thirty days.</p> <p>(ii) In sub-clause (c) for the words “two opportunities”, substituted as the words “three</p>

<i>Amendment Rules/Circulars/Notifications/Orders/ and Particular</i>	<i>Description</i>
	<p>opportunities”</p> <p>Form no INC – 1 has been substituted by the new Form which is available on MCA website.</p>
<b>CHAPTER III</b> <b>PROSPECTUS AND ALLOTMENT OF SECURITIES</b>	
<p>Companies (Prospectus and Allotment of securities) Amendment Rules, 2014 dated June 30, 2014 additional proviso to Rule 14(2)(a).</p>	<p>Amendment in Rule 14(2) of Companies (Prospectus and Allotment of securities) Rules, 2014</p> <p>“Provided also that in case of an offer or invitation for non-convertible debentures referred to in the second proviso, made within a period of six months from the date of commencement of these rules, the special resolution referred to in the second proviso may be passed within the said period of six months from the date of commencement of these rules”</p>
<p>General Circular No. 43/2014 dated 13th November, 2014 on the subject of applicability of Chapter II of Companies Act, 2013 on Foreign Currency Convertible Bonds (FCCBs) and Foreign Currency Bonds (FCBs).</p>	<p>The issue of FCCBs and FCBs by companies is regulated by the regulations of Ministry of Finance on “Issue of Foreign Currency Convertible Bonds and Ordinary Shares (Through Depository Receipts Mechanism) Scheme, 1993” and Reserve Bank of India through its various directions/regulations, hence unless otherwise provided in the said Scheme or the directions/regulations issued by Reserve Bank of India, provisions of Chapter III of the Companies Act, 2013 shall not apply to an issue of FCCBs or FCBs made exclusively to persons resident outside India in accordance with above regulations.</p>
<b>CHAPTER IV</b> <b>SHARE CAPITAL AND DEBENTURES</b>	
<p>Companies (Share Capital and Debentures) Amendment Rules, 2015 dated 18th March, 2015.</p>	<ul style="list-style-type: none"> <li>– Issuance of revised Form SH-13 and Form SH-14.</li> <li>– The limit of issuing duplicate share certificate has been revised to 45 days.</li> </ul> <p>Insertion of proviso in Rule 13 sub-rule (1)</p> <p>“Provided that in case of any preferential offer made by a company to one or more existing members only, the provisions of sub-rule (1) and proviso to sub-rule (3) of rule 14 of Companies (Prospectus and Allotment of Securities) Rules, 2014 shall not apply.”</p>
<p>Companies (Share Capital and Debentures) Second</p>	<p>In rule 5 in sub rule (3) was substituted, the requirement</p>

<i>Amendment Rules/Circulars/Notifications/Orders/ and Particular</i>	<i>Description</i>
Amendment Rules, 2015 dated 29th May, 2015 issue of Share Certificate.	for affixing common Seal has been made optional for
Companies (Share Capital and Debentures) Third Amendment Rules, 2015 6th November, 2015	in rule 18,- In sub-rule (1), in clause (a) after sub-clause (iii) the following has been inserted as –  (iv) Companies permitted by a Ministry or Department of the Central Government or by Reserve Bank of India or by the National Housing Bank or by any other statutory authority to issue debentures for a period exceeding ten years.”
<b>CHAPTER V</b> <b>ACCEPTANCE OF DEPOSITS BY COMPANIES</b>	
General Circular No. 27/2014 dated 30/06/2014- Clarification regarding filing of form DPT-4 under Companies Act, 2013.	Extension of time for the period of 2 months i.e. upto 31/08/2014 without any additional fee in terms of section 403 of the Companies Act to enable the company for filing the statement in Form DPT-4.
General Circular No. 05/2015 dated 30th March, 2015 on the subject of Amounts received by private companies from their members, directors or their relatives before 1st April, 2014.	It was clarified that the amounts received by private companies from their members, directors or their relatives prior to 1st April, 2014 shall not be treated as ‘deposits’ under the Companies Act, 2013 and Companies (Acceptance of Deposits) Rules, 2014 subject to the condition that relevant private company shall disclose, in the notes to its financial statement for the financial year commencing on or after 1st April, 2014 the figure of such amounts and the accounting head in which such amounts have been shown in the financial statement.
Companies (Acceptance of Deposits) Amendment Rules, 2015 dated 31st March, 2015.	Insertion of a proviso to the explanation to sub-clause (vii) of Rule 2(1) of Companies (Acceptance of Deposits) Rules, 2014  The Companies (Acceptance of Deposits) Amendment Rules, 2015 dated 31st March, 2015 amongst other things, provides that every eligible company shall obtain, at least once in a year, credit rating for deposits accepted by it in the manner specified in the rules and a copy of the rating shall be sent to the Registrar of Companies alongwith the return of deposits in Form DPT-3. The amendment rules also issued revised Form DPT-3 (Return of deposit).  Substitution of Rule 5(1) with the following :  “Provided that the companies may accept deposits without deposit insurance contract till the 31st March, 2016 or till the availability of a deposit insurance product, whichever is earlier.”

<i>Amendment Rules/Circulars/Notifications/Orders/ and Particular</i>	<i>Description</i>
Companies (Acceptance of Deposits) Second Amendment Rules, 2015 dated 15th September, 2015	<p>in rule 2, in sub-rule (1), in clause (c), for sub-clause Amendment Rules, 2015 dated 15<sup>th</sup> September, 2015 (viii), the following has been substituted.</p> <p>- in rule 3</p> <p>(a) for the words “paid-up share capital and free reserves”, wherever they occur, the words “paid-up share capital, free reserves and securities premium account” has been substituted;</p> <p>(b) in sub-rule (8), in the Table, for item (e) and entries relating thereto the following has been substituted.</p>
<b>CHAPTER - VI</b> <b>REGISTRATION OF CHARGES NEW CHAPTER</b>	
<b>Companies (Registration of Charges) Amendment Rules, 2015 dated 29.05.2015</b>	Substitution in rule 3, in sub-rule (4), In Clause (a), for the words “under the seal of the company “, substituted as the words “under the seal ,if any, of the company”
<b>CHAPTER VII</b> <b>MANAGEMENT AND ADMINISTRATION</b>	
Companies (Management and Administration) Second Amendment Rules, 2014 dated July 24, 2014	<p>In rule 9, after sub-rule (3), the following proviso shall be inserted namely:—</p> <p>“Provided that nothing contained in this rule shall apply in relation to a trust which is created, to set up a Mutual Fund or Venture Capital Fund or such other fund as may be approved by the Securities and Exchange Board of India”.</p> <p>In rule 13: (a) the words “either value or volume of the shares” shall be omitted;</p> <p>(b) the Explanation shall be omitted. in rule 23, in sub-rule (1), for the words “not less than five lakh rupees”, the words “not more than five lakh rupees” shall be substituted in rule 27, in sub-rule (1) and in the Explanation, for the word “shall”, the word “may “shall be substituted.</p>
General Circular 28/2014 dated 9th July, 2014 on subject Clarification on form MGT – 14 through Straight Through Process mode.	In order to simplify procedures and with a view to ensure timely disposal of E-Forms in the office of Registrars of Companies and keeping in view the penal provisions for false declaration as contained in section 448 read with section 447, Ministry of Corporate Affairs clarified that form no. MGT-14 will be processed and taken on record using the Straight through Process

<i>Amendment Rules/Circulars/Notifications/Orders/ and Particular</i>	<i>Description</i>
	mode, in all cases except for change of Name, Change of objects, resolution for further issue of capital and conversion of companies.
General Circular No. 45/2014 dated 18th November, 2014	Extension of time for holding Annual General Meeting (AGM) under section 96(1) of the Companies Act, 2013-Companies registered in State of Jammu and Kashmir.
Companies (Management and Administration) Amendment Rules, 2015 dated 19th March, 2015	Rule 20 of Companies (Management and Administration) Rules, 2014, relating to Electronic Voting have been substituted, with New Rule 20.
General Circular No. 10/2015 dated 13.07.2015 - Relaxation of additional fees and extension of last date of in filing of forms MGT-7 (Annual Return) and AOC-4 (Financial Statement) under the Companies Act, 2013	Relaxation in additional fee payable on Filing of Financial Statement Forms AOC- 4, AOC-4 XBRL and Annual Return in Form MGT-7 up to 31.10.2015 has been granted. Further a company which is not required to file Financial Statement in XBRL format and is required to file its consolidated financial statement in separate form AOC-4 CFS may do so without any additional fee up to 30.11.2015.
General Circular No. 11/2015 Dated 21.07.2015 - Clarification with regard to circulation and filing of financial statement under relevant provisions of the Companies Act, 2013	<p>It is clarified that a company holding a general meeting after giving shorter notice as provided under section 101 of the Act may also circulate financial statement (to be laid/considered in the same general meeting ) at such shorter notice.</p> <p>It is also clarified that in case of a foreign subsidiary, which is not required to get its accounts audited as per legal requirement prevalent in the country of its incorporation and which does not get such accounts audited, the holding/parent Indian may place/ file such unaudited accounts to comply with requirement of Section 136(1) and 137(1) as applicable. Further it is clarified that these accounts need to be translated in English if the original accounts are not in English. Further the format of accounts of foreign subsidiaries should be as far as possible, in accordance with requirements under Companies Act, 2013. In case this is not possible, a statement indicating the reasons for deviation may be placed /filed along with such accounts.</p>
Companies (Management and Administration) Amendment Rules, 2015 dated 28 <sup>th</sup> August 2015	(i) in rule 23, in sub-rule(1) for the words 'not more than five lakh rupees', the words 'not less than five lakh rupees' has been substituted.
Companies (Management and Administration) Third Amendment Rules, 2015 dated 16 <sup>th</sup> November,2015	Form no MGT-7 has been substituted by the new Form MGT-7 which is available on MCA website.

<i>Amendment Rules/Circulars/Notifications/Orders/ and Particular</i>	<i>Description</i>
<b>CHAPTER VIII DECLARATION AND PAYMENT OF DIVIDEND</b>	
Companies (Declaration and Payment of Dividend) Second Amendment Rules, 2015 dated 29.05.2015	In Companies (Declaration and Payment of Dividend) Rules, 2014 in rule 3, Sub rule (5) Omitted.
Investor Education and Protection Fund Authority (Appointment of Chairperson and Members, Holding of Meetings and Provision for Offices and Officers) Rules, 2016 dated 13 <sup>th</sup> January, 2016	Central Government has notified these rules In exer cise of the powers conferred by sub-sections (5), (6.) and (7) of section 125 read with section,469 of the Com
MCA Notification NO. S.O.125 (E) dated 13 <sup>th</sup> January, 2016	Sub-section (5), Sub-section(6), and Sub-sec tion (6) of Section 125 of Companies Act, 2013 have come into force with effect from 13 <sup>th</sup> January ,2016
<b>CHAPTER IX ACCOUNTS OF COMPANIES</b>	
General Circular No. 35/2014 dated 27th August, 2014 on the subject of Clarification Accounting Standards (AS) 10 - Capitalization of Cost.	<p>It has been clarified that Accounting Standards AS-10 and AS-16 prescribe the principles of capitalization of various costs based on the underlying concept that only such expenditure should be capitalized as form a part of the cost of fixed assets which increase the worth of the assets. Cost incurred during the extended delay in commencement of commercial production after the plant is otherwise ready does not increase the worth of fixed assets. Such costs cannot, therefore, be capitalized.</p> <p>Accounting Standard AS 16, inter alia provides guidance with regard to part capitalization where some units of a project are complete. In case one of the units of the project is ready for commercial production and is capable of being used while construction continues for the other units, costs should be capitalized in relation to that part once the part is ready for commercial production.</p> <p>Further is has been clarified that AS 10 and AS 16 are applicable irrespective of whether the power projects are 'Cost Plus projects' or 'Competitive Bid projects'.</p>
General Circular No. 36/2014 dated 17th September, 2014 on the subject of Corporate Social Responsibility	<p>Rule 4(6) of the Companies (Corporate Social Responsibility Policy) Rules, 2014 as notified on 27.02.2014 has been amended by notification dated 12.09.2014; and</p> <p>Consequently, clarification (iv) in General Circular No. 21 of 2014 dated 18.06.2014, stands omitted.</p>

<i>Amendment Rules/Circulars/Notifications/Orders/ and Particular</i>	<i>Description</i>
General Circular No. 39/2014 dated 14th October, 2014 on matters relating to consolidated Financial Statement	It is clarified that Schedule III to the Act read with the applicable Accounting Standards does not envisage that a company while preparing its CFS merely repeats the disclosures made by it under stand-alone accounts being consolidated. In the CFS, the company would need to give all disclosures relevant for CFS only.
The Companies (CSR policy) Amendment rules, 2014 dated 12th September, 2014	In rule 4 sub-rule (6), after the words "but such expenditure" the words and comma "including expenditure on administrative overheads," shall be inserted.
The Companies (Accounts) Amendment Rules, 2014 dated 14th October, 2014	<p>In rule 6, after the existing proviso, the following provisos shall be inserted, namely:-</p> <p>"Provided further that nothing in this rule shall apply in respect of preparation of consolidated financial statement by an intermediate wholly-owned subsidiary, other than a wholly-owned subsidiary whose immediate parent is a company incorporated outside India:</p> <p>Provided also that nothing contained in this rule shall, subject to any other law or regulation, apply for the financial year commencing from the 1st day of April, 2014 and ending on the 31st March, 2015, in case of a company which does not have a subsidiary or subsidiaries but has one or more associate companies or joint ventures or both, for the consolidation of financial statement in respect of associate companies or joint ventures or both, as the case may be. "</p>
The Companies (Accounts) Amendment rules, 2015 dated 16th January, 2015	<p>Rule 2A has been inserted.</p> <p>2A. Notice of address at which books of account are to be maintained.—For the purposes of the first proviso to sub-section (1) of Section 128, the notice regarding address at which books of account may be kept shall be in Form AOC-5.</p> <p>New form AOC-5 inserted.</p>
The Companies (CSR policy) Amendment rules, 2014 dated 19th January, 2015	Rule 4 sub-rule (2) has been amended
The Companies (Indian Accounting Standards) Rules, 2015. Notification dated 16th February, 2015	Issuance of Indian Accounting Standards
General circular No. 11/2015 dated 21 <sup>st</sup> July, 2015	Clarification with regard to circulation and filing of financial statement under relevant provisions of the Companies Act,2013

<i>Amendment Rules/Circulars/Notifications/Orders/ and Particular</i>	<i>Description</i>
MCA Notification No. S.O. 2437 (E) dated 4 <sup>th</sup> September , 2015	MCA has exempted government companies producing Defence Equipment including the Space Research from sub-section (6) of section 129 of the Companies Act, 2013 (18 of 2013), and paras 5 (ii) (a) (1), 5 (ii) (a) (2), 5(ii) (e), 5(iii), 5 (viii) (a), 5 (viii) (b), 5 (viii) (c) and 5 (viii) (e) relating to Additional Information of the General Instructions for preparation of Statement of Profit and Loss in Schedule III of the Companies Act, 2013 subject to fulfilment of certain conditions.
MCA Notification No. GSR 679 (E) dated 4 <sup>th</sup> Companies Act, 2013.	Central Government has altered the Schedule III of the September, 2015
Companies (Accounts) Second Amendment Rules, 2015, dated 4 <sup>th</sup> September 2015	<p>in rule 2, in sub-rule (1), after clause (d), has been inserted, –</p> <p>(da) “Indian Accounting Standard” means the Indian Accounting Standards referred to in Rule 3 and Annexure to the company (Indian Accounting Standard) Rules, 2015</p> <p>after rule 4 the following rule has been inserted –</p> <p><b>“4A. Forms and items contained in financial statements.-</b> The financial statements shall be in the form specified in Schedule III to the Act and comply with Accounting Standards or Indian Accounting Standards as applicable :</p> <p>Provided that the items contained in the financial statements shall be prepared in accordance with the definitions and other requirements specified in the Accounting Standards or the Indian Accounting Standards, as the case may be.”.</p> <p>in rule 8, in sub-rule (3), the following proviso has been inserted –</p> <p>“Provided that the requirement of furnishing information and details under this sub-rule shall not apply to a Government company engaged in producing defence equipment.”.</p> <p>In rule 12, for sub-rule (1) the following rule has been substituted –</p> <p>Every company shall file the financial statements with Registrar together with Form AOC-4 and the consolidated financial statement, if any, with Form AOC-4 CFS.</p> <p>For Form AOC-4, the following Form AOC-4 and AOC-4 CFS have been substituted.</p>
<b>Companies (Filing of Documents and Forms in Extensible Business Reporting language) Rules,</b>	Vide companies (XBRL) amendment Rules, 2015 dated 9 <sup>th</sup> September, 2015. The following class of companies



<i>Amendment Rules/Circulars/Notifications/Orders/ and Particular</i>	<i>Description</i>
<b>2015. Dated 9th September, 2015</b>	<p>shall file their financial statement and other documents under section 137 of the Act, with the Registrar in e-form AOC-4 XBRL given in Annexure-I for the financial years commencing on or after 1<sup>st</sup> April,2014 using the XBRL taxonomy given in Annexure II, namely:-</p> <ul style="list-style-type: none"> <li>(i) all companies listed with any Stock Exchange(s) in India and their Indian subsidiaries; or</li> <li>(ii) all companies having paid up capital of rupees five crore or above;</li> <li>(iii) all companies having turnover of rupees hundred crore or above; or</li> <li>(iv) all companies which were hitherto covered under the Companies (Filing of documents and Forms in Extensible Business Reporting Language) Rules, 2011:</li> </ul> <p>Provided that the companies in Banking, Insurance, Power Sector and Non Banking Financial companies are exempted from XBRL filing.</p>
General circular No. 01/2016 dated 12 <sup>th</sup> January 2016	Frequently Asked Questions (FAQs) with regard to Corporate Social Responsibility under section 135 of the Companies Act, 2013
<b>CHAPTER X</b> <b>AUDIT AND AUDITORS</b>	
Companies (Cost Records and Audit) Rules, 2014 on 30th June, 2014	<p>The Central Government notified Companies (cost records and audit) Rules, 2014 on 30th June, 2014. The rules inter-alia prescribes-</p> <ul style="list-style-type: none"> <li>(i) Sectors for which Cost Records made applicable</li> <li>(ii) Format of maintenance of cost records in form CRA-1.</li> <li>(iii) Applicability for Cost Audit</li> <li>(iv) Filing of notice of appointment of Cost Auditor with the Central Government in e-form CRA-2.</li> <li>(v) Format of Cost Audit Report in Form CRA-3.</li> <li>(vi) Filing of Cost Audit Report along with full information and explanation on</li> </ul> <p>Every reservation or qualification contained therein, in form CRA-4 to Central Government.</p>

<i>Amendment Rules/Circulars/Notifications/Orders/ and Particular</i>	<i>Description</i>
	<p>Due to delay in availability of form CR-2 on MCA-21 portal, the last date for filing was extended vide circular no. 42/2014 dt. 12th November, 2014 and Circular no. 2/2015 dt. 11th February, 2015.</p> <p>On 31st December, 2014 the Central Government issued Companies (Cost Record and Audit) Amendment Rules, 2014 which significantly amended the rules.</p>
Companies (Removal of Difficulties) Seventh Order, 2014 on 4th September, 2014	<p>Amended section 143(5) of the Companies Act, to be read as under :—</p> <p>“In the case of a Government company or any other company owned or controlled, directly or indirectly, by the Central Government, or by any State Government or Governments, or partly by the Central Government and partly by one or more State Governments, the Comptroller and Auditor General of India shall appoint the auditor under sub-section (5) or sub-section (7) of Section 139 and direct such auditor the manner in which the accounts of the company are required to be audited and thereupon the auditor so appointed shall submit a copy of the audit report to the Comptroller and Auditor-General of India which, among other things, include the directions, if any, issued by the Comptroller and Auditor-General of India, the action taken thereon and its impact on the accounts and financial statement of the company”</p>
Companies (Auditor’s Report) Order, 2015 dated 10th April, 2015	<p>The Companies (Auditor’s Report) Order, 2015 applicable to every company including a foreign company. The order is not applicable to –</p> <ul style="list-style-type: none"> <li>— Banking company,</li> <li>— Insurance company,</li> <li>— Company licensed to operate under section 8 of the Companies Act, 2013,</li> <li>— One Person Company and Small Company</li> <li>— Private limited company (with a paid up capital and reserves not more than rupees fifty lakh and which does not have loan outstanding exceeding rupees twenty five lakh from any bank or financial institution and does not have a turnover exceeding rupees five crore at any point of time during the financial year)</li> </ul>
The Companies (Cost Records and Audit) Amendment Rules, 2015 dated 12.06.2015	Forms CRA- 2 and CRA- 4 substituted.

<i>Amendment Rules/Circulars/Notifications/Orders/ and Particular</i>	<i>Description</i>
<p>General Circular No. 08/2015 dated 12.06.2015 - Extension of time for filing of Notice of appointment of the Cost Auditor for the F.Y. 2015-16 in Form CRA-2 and filing of cost audit report to the Central Government for the F.Y. 2014-15 in Form CRA-4.</p>	<p>The additional fee on account of any delay beyond the prescribed period of 30 days from the date of the board meeting, in which the appointment of the Auditor was made for filling CRA- 2 for the financial year starting on or after 1st April, 2015 is waived for all such filling till 30th June, 2015.</p> <p>Additional fees on delayed filling of form CRA-4 beyond the prescribed period of 30 days from the date of receipt of a copy of Cost Audit Report from the Cost Auditor for the Financial Year starting on or after 1st April, 2014 is also waived for all such filling till 31st August, 2015</p>
<p>Companies (Audit and Auditors) Amendment Rules, 2015 dated 14<sup>th</sup> December ,2015</p>	<p>Rule 13 has been substituted</p>
<p><b>CHAPTER XI</b></p> <p><b>APPOINTMENT AND QUALIFICATION OF DIRECTORS</b></p>	
<p>General Circular No. 38/2014 dated 14th October, 2014 on the subject Right of persons other than retiring directors to stand for directorship - Refund of deposit under section 160 of the Companies Act, 2013 in certain cases.</p> <p>General Circular No. 03/2015 dated 03rd March, 2015 on the subject of Clarification relating to filing of e-form DIR - 11 &amp; DIR-12 under the Companies Act, 2013</p> <p>Companies (Appointment and Qualification of Directors) Amendment Rules, 2014 dated 18<sup>th</sup> September, 2014</p>	<p>In case of section 8 companies it has been clarified that the Board of directors of a section 8 company is to decide as to whether the deposit made by or on behalf of the person failing to secure more than twenty-five percent of the valid votes is to be forfeited or refunded.</p> <p>Allowed any one of the resigned director who was an authorized signatory Director for the purpose of filing DIR-12 only along with additional fees, as applicable and subject to compliance of other provisions of Companies Act, 2013.</p> <p>(i) Rule 6(2) amended to rationalize the required information from the applicant registering on the databank of Independent Directors by removing the required details of Income Tax PAN, Mother's and Spouse Name from the databank of Independent Directors.</p> <p>(ii) Rule 6(4) amended to remove the requirement of <b>Form DIR-1</b> to be filled up by a person who desires to get his name included in the databank of Independent Director as the rules omitted the existing Form DIR-1.</p> <p>(iii) Rule 9(3) amended to include the term "verify" while applying for allotment of Director Identification Number (DIN) in form DIN-3. Earlier the verification by the applicant provided in Form DIR-4 as</p>

<i>Amendment Rules/Circulars/Notifications/Orders/ and Particular</i>	<i>Description</i>
	<p>attachment to DIN 3. This requirement has now removed as the same is included in revised Form DIN-3.</p> <p>(iv) Every individual who has been allotted a DIN under these rules shall report the change if any in his particulars as stated in Form DIN-3. <b>Rule 12 (1) is also amended to include the term “verify” in form DIR 6 itself</b>, which is the prescribed form for intimating change in DIN particulars. Earlier the verification by the applicant provided in Form DIR-7 as attachment to DIN 6.</p> <p>(v) New sub rule (4) inserted in Rule 9 to provide that in case the name of a person does not have a last name, then his or her father’s or grandfather’s surname shall be mentioned in the last name along with the declaration in Form No. DIR-3A (<b>New Form</b>). This declaration will be submitted alongwith Form DIN-3.</p> <p>(vi) Rule 10 amended to replace the concept of “Provisional DIN” with the “Application Number”.</p> <p>(vii) New sub-rule 10A has been inserted.</p>
<p>Companies (Appointment and Qualification of Directors) Amendment Rules, 2015 dated 19<sup>th</sup> January, 2015</p>	<p>Insertion of following proviso  “Provided that in case a company has already filed <b>Form DIR-12</b> with the Registrar under rule 15, a foreign director of such company resigning from his office may authorise in writing a practising chartered accountant or cost accountant in practice or company secretary in practice or any other resident director of the company to sign <b>Form DIR-11</b> and file the same on his behalf intimating the reasons for the resignation.”</p>
<p><b>CHAPTER XII</b></p> <p><b>MEETINGS OF BOARD AND ITS POWERS</b></p>	
<p>General Circular No. 30/2014 dated 17/07/2014- Clarification on matters relating to related party transactions</p>	<p>The clarifications are given for the following points:-</p> <p><i>Scope of second proviso to Section 188(1) -</i></p> <p>Second proviso to subsection (1) of section 188 requires that no member of the company shall vote on a special resolution to approve the contract or arrangement (referred to in the first proviso), if such a member is a related party. It is clarified that ‘related party’ referred to in the second proviso has to be construed with reference only to the contract or</p>

<i>Amendment Rules/Circulars/Notifications/Orders/ and Particular</i>	<i>Description</i>
	<p>arrangement for which the said special resolution is being passed. Thus, the term 'related party' in the above context refers only to such related party as may be a related party in the context of the contract or arrangement for which the said special resolution is being passed.</p> <p><i>Applicability of Section 188 to corporate restructuring, amalgamations etc:</i></p> <p>It is clarified that transactions arising out of compromises, Arrangements and Amalgamations dealt with under specific provisions of the Companies Act, 1956/Companies Act, 2013, will not attract the requirements of section 188 of the Companies Act, 2013.</p> <p><i>Requirement of fresh approvals for past contracts under Section 188:</i></p> <p>Contracts entered into by companies, after making necessary compliances under Section 297 of the Companies Act, 1956, which already came into effect before the commencement of Section 188 of the Companies Act, 2013, will not require fresh approval under the said section 188 till the expiry of the original term of such contracts. Thus, if any modification in such contract is made on or after 1<sup>st</sup> April, 2014, the requirements under section 188 will have to be complied with.</p>
<p>General Circular 04/2015 dated 10th March, 2015 on subject of loans and advances to employees</p>	<p>It has been clarified that loans and/or advances made by the companies to their employees, other than the managing or whole time directors (which is governed by section 185) are not governed by the requirements of section 186 of the Companies Act, 2013. This clarification will, however, be applicable if such loans/advances to employees are in accordance with the conditions of service applicable to employees and are also in accordance with the remuneration policy, in cases where such policy is required to be formulated.</p>
<p>General Circular 06/2015 dated 9th April, 2015, clarification under sub-section (7) of section 186 of the Companies Act, 2013</p>	<p>In cases where the effective yield (effective rate of return) on tax free bonds is greater than the prevailing yield of one year, three year, five year or ten year Government Security closest to the tenor of the loan, there is no violation of sub-section (7) of section 186 of the Companies Act, 2013.</p>
<p>Companies (Meetings of Board and its Powers) Second Amendment Rules, 2014 dated 14th August, 2014</p>	<p>Substitution of Rule 15 sub-rule (3) relating to contract or arrangements with related party.</p>

<i>Amendment Rules/Circulars/Notifications/Orders/ and Particular</i>	<i>Description</i>
Companies (Meetings of Board and its Powers) Amendment Rules, 2015 dated 18th March, 2015	Rule 8 relating to power of Board to be exercised at Board Meeting has been amended by omitting item numbers (3), (5), (6), (7), (8) and (9) and the entries relating thereto.
Companies (Removal of Difficulties) Order, 2015 dated 13th February, 2015	Insertion in section 186 of the Companies Act, 2013 in sub-section (11), in clause (b), after item (iii), the following item has been inserted, namely :—  “(iv) made by a banking company or an insurance company or a housing finance company, making acquisition of securities in the ordinary course of its business.”.
Companies (Meetings of Board and its Powers) Second Amendment Rules, 2015 dated 14/12/2015	After Rule 6 the following rule has been inserted. Rule – 10 has been omitted  In rule 15, in sub-rule (3), for the words “Special Resolution”, has been substituted with the word “resolution”.
<b>CHAPTER XIII</b>	
<b>APPOINTMENT AND REMUNERATION OF MANAGERIAL PERSONNEL</b>	
Notification no S.O. 1913(E) dated 25/07/2014 -- second proviso to sub-section(1) of section 203 of the Companies Act 2013	The class of companies for the purpose of the second proviso to section 203(1) of the Companies Act 2013, includes Public companies having paid-up share capital of rupees 100 crore or more and annual turnover of rupees 1000 crore or more which are engaged in multiple businesses and have appointed Chief Executive Officer for each such business
<b>CHAPTER XXIV</b>	
<b>REGISTRATION OFFICES AND FEES</b>	
Companies (Registration Offices and Fees) Amendment Rules, 2015 dated 24th February, 2015	The Companies (Registration Offices and Fees) Amendment Rules, 2015-04-29 Insertion of Sub-rule (7) in Rule 10  The inserted rule reads thus:  “7. Any further information or documents called for, in respect of application or e-form or document, filed electronically with the Ministry of Corporate Affairs shall be furnished in Form No. GNL-4 as an addendum”
Companies (Registration Offices and Fees) Second Amendment Rules, 2015 dated 29.05.2015	In rule 15 the following proviso was inserted

<i>Amendment Rules/Circulars/Notifications/Orders/ and Particular</i>	<i>Description</i>
	“Provided that no person shall be entitled under section 399 to inspect or to obtain copies of resolution referred to in clause (g) of Sub section (3) of Section 117 of the Act”.
<b>The Companies (Amendment) Act, 2015</b>	
MCA Notification No. - S.O. 1440(E) dated 29th May, 2015	Provisions of sections 1 to 12 and 15 to 23 of the Companies (Amendment) Act, 2015 come into force from 29th May, 2015
<b>Exemption Notifications</b>	
<b>i. Government Companies</b>	G.S.R. 463(E) dated 05th June, 2015 for Exemptions to Government Companies under section 462 of Companies Act, 2013
<b>ii. Nidhi Companies</b>	G.S.R. 465(E) dated 05th June, 2015 for Exemptions to Nidhi's under section 462 of Companies Act, 2013
<b>iii. Private Companies</b>	G.S.R. 464(E) dated 05th June, 2015 for Exemptions to Private Companies under section 462 of Companies Act, 2013
<b>iv. Section 8 (Non-Profit)</b>	G.S.R. 466(E) dated 05th June, 2015 for Exemptions to Section 8 (Non-Profit) under section 462 of Companies Act, 2013.
<b>OTHERS</b>	
General Circular 32 /2014 dated 23/07/2014- Clarification on transitional period for resolutions passed Under the Companies Act, 1956.	Resolutions approved or passed by companies under relevant applicable provisions of the Old Act during the period from 1 <sup>st</sup> September, 2013 to 31 <sup>st</sup> March, 2014, can be implemented, in accordance with provisions of the Old Act, notwithstanding the repeal of the relevant provision subject to the conditions (a) that the implementation of the resolution actually commenced before 1 <sup>st</sup> April, 2014 and (b) that this transitional arrangement will be available upto expiry of one year from the passing of the resolution or six months from the commencement of the corresponding provision in New Act whichever is later. It is also clarified that any amendment of the resolution must be in accordance with the relevant provision of the New Act.
<b>Schedule</b>	
Notification no. G.S.R. 237 (E). dated 31/03/2014- Amendment in schedule II and in Part C.	Amendment in schedule II of the Companies Act, in Part 'A' in Para 3 for sub paragraphs (i) to (iii)

<i>Amendment Rules/Circulars/Notifications/Orders/ and Particular</i>	<i>Description</i>
Notification G.S.R. 627(E) dated 29th August, 2014- Amendment in Schedule II	Substitution of sub- paragraph (i) in paragraph 3 of Part 'A'.  Substitution of after paragraph 4 under the heading Notes after Part 'C'.
Clarification with regard to applicability of Schedule V	It has been clarified that a managerial person remuneration under schedule XIII of
General Circular No. 07 / 2015 dated 10th April, 2015 on the subject of Remuneration to managerial person under Schedule XIII of the Companies Act, 1956 - Clarification with regard to payment for period	Companies Act, 1956 may continue to receive remuneration for his remaining term in accordance with terms and conditions approved by company as per relevant provisions of Schedule XIII of earlier Act even if the part of his/her tenure falls after 1st April, 2014.
Notification G.S.R. 568 (E) dated 06/08/2014- In exercise of the powers conferred by Section 467(1) of the Companies Act,2013, the Central Government hereby makes further amendments in Schedule VII of the said Act	In Schedule VII, after item (x), the following item and entry shall be inserted, namely: “(xi) Slum area development. Explanation. – For the purposes of this item, the term 'slum area' shall mean any area declared as such by the Central Government or any State Government or any other competent authority under any law for the time being in force.”
Notification G. S. R. 741(E) dated 24th October, 2014 – Amendment in Schedule VII	(i) In item (i), after the words “and sanitation”, the words “including contribution to the Swach Bharat Kosh set-up by the Central Government for the promotion of sanitation” has been inserted;  (ii) In item (iv), after the words “and water”, the words “including contribution to the Clean Ganga Fund setup by the Central Government for rejuvenation of river Ganga;” has been inserted.



# Chapter I

## PRELIMINARY

### Circulars, Orders and Amendment Rules issued by the Ministry under this chapter so far:

Sl. No.	Particulars	Impact on Lesson of ACLP
1.	The Companies (Removal of Difficulties) Fifth Order, 2014 dated 9th July, 2014	Lesson 8 Key Managerial Perosnnel
2.	The Companies (Removal of Difficulties) Sixth Order, 2014 dated 24th July, 2014.	Lesson 8 Key Managerial Perosnnel
3.	The Companies (Removal of Difficulties) Order, 2015 dated 13th Feb., 2015.	General
4.	The Companies (Specification of Definitions Details) Amendment Rules, 2014 dated 17th July, 2014.	General

### I. RELATED PARTY

Section 2(76) of the Companies Act 2013 as notified on September 12, 2013 defines “related party”, with reference to a company, means –

- (i) a director or his relative;
- (ii) a key managerial personnel or his relative;
- (iii) a firm, in which a director, manager or his relative is a partner;
- (iv) a private company in which a director or manager is a member or director;
- (v) a public company in which a director or manager is a director or holds along with his relatives, more than two per cent. of its paid-up share capital;
- (vi) any body corporate whose Board of Directors, managing director or manager is accustomed to act in accordance with the advice, directions or instructions of a director or manager;
- (vii) any person on whose advice, directions or instructions a director or manager is accustomed to act:  
 Provided that nothing in sub-clauses (vi) and (vii) shall apply to the advice, directions or instructions given in a professional capacity;
- (viii) any company which is –
  - (A) a holding, subsidiary or an associate company of such company; or
  - (B) a subsidiary of a holding company to which it is also a subsidiary;

- (ix) such other person as may be prescribed;

### Issue involved

Whether sub-clause (iv) to Section 2(76) includes the term relative?

There are interpretation issue due to absence of the word “relative” in sub-clause (iv), although such word has occurred in sub-clauses (i), (ii), (iii) and (v) of the Section 2 (76) resulting in a disharmonious interpretation of the said definition.

### Order issued

The Ministry of Corporate Affairs vide its Companies (Removal of Difficulties) fifth Order, 2014, dated 9th July, 2014 notified that in sub-clause (v) of clause (76) of section 2, for the words “or holds”, the words “and holds” shall be substituted.

The Ministry of Corporate Affairs vide its Companies (Removal of Difficulties) Sixth Order, 2014, dated July 24, 2014 notified that In section 2 of the Companies Act, 2013, in clause (76), in sub-clause (iv), after the word “manager”, the word “or his relative” shall be inserted.

Accordingly the amended definition of related party under Section 2(76) is as follows (changes indicated in the bold):

“related party”, with reference to a company, means –

- (i) a director or his relative;
- (ii) a key managerial personnel or his relative;
- (iii) a firm, in which a director, manager or his relative is a partner;
- (iv) a private company in which a director or manager **or his relative** is a member or director;
- (v) a public company in which a director or manager is a director **and holds** along with his relatives, more than two per cent. of its paid-up share capital;
- (vi) any body corporate whose Board of Directors, managing director or manager is accustomed to act in accordance with the advice, directions or instructions of a director or manager;
- (vii) any person on whose advice, directions or instructions a director or manager is accustomed to act:  
 Provided that nothing in sub-clauses (vi) and (vii) shall apply to the advice, directions or instructions given in a professional capacity;
- (viii) any company which is –
  - (A) a holding, subsidiary or an associate company of such company; or
  - (B) a subsidiary of a holding company to which it is also a subsidiary;
- (ix) such other person as may be prescribed;

### Issue involved

Whether Independent director of the holding company or his relative with reference to a company is deemed to be related party under Rule 3 of Companies (Specification of Definitions details) Rules 2014?

Rule 3 of Companies (Specification of Definition details) Rules 2014 reads as under:

Rule 3. Related party.- For the purposes of sub-clause (ix) of clause (76) of section 2 of the Act, a director or key managerial personnel of the holding company or his relative with reference to a company, shall be deemed to be a related party.

### **Amendments to Rules**

The Ministry has vide its Companies (Specification of Definitions details) Amendment Rules 2014 clarified that , in Rule 3, after the words “A director” the words “other than independent director” shall be inserted. Accordingly Independent directors of the holding company shall not be deemed to be a related party.

Accordingly, the amended Rule 3 is read as under:

Rule 3. Related party.- For the purposes of sub-clause (ix) of clause (76) of section 2 of the Act, a director other than independent director or key managerial personnel of the holding company or his relative with reference to a company, shall be deemed to be a related party.

## **II. SMALL COMPANY**

Section 2(85) of the Companies Act, 2013 defines small company as under:

“small company” means a company, other than a public company,—

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

Provided that nothing in this clause shall apply to –

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

### **Issue Involved**

According to clause (85) of section 2, a company may be treated as a ‘small company’ if it meets either of the conditions provided therein i.e. Rs. 50 lakh paid up capital **or** turnover of Rs. 2 Crore. Difficulties have arisen in this regard as companies which, though, meet one of the criteria but exceed the monetary limit in respect of second criteria excessively are also getting classified as ‘small companies’.

### **Order issued**

In order to remove the said difficulty, the Ministry of Corporate Affairs vide its Companies (Removal of Difficulties) Order, 2015 dated 13th February, 2015 notified that the word “Or” occurring between clause sub-clause (i) and (ii) of clause (85) of section 2, the words “and” shall be substituted.

Now, subject to the other provisions of the Companies Act, 2013 the companies satisfying both the criteria of maximum paid up capital of Rs. 50 lakh **or** turnover of Rs. 2 Crore shall be treated as small Company.

Accordingly, the amended definition under Section 2(85) is read as under

“small company” means a company, other than a public company, –

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

Provided that nothing in this clause shall apply to –

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

The text of the Circulars, Orders and Amended Rules issued under this Chapter appended as under:

1

**MINISTRY OF CORPORATE AFFAIRS**

**ORDER**

New Delhi, the 9th July, 2014

S.O. 1820(E).—Whereas the Companies Act, 2013 (18 of 2013) (hereinafter referred to as the said Act) received the assent of the President on 29th August, 2013 and section 1 thereof came into force on the same date;

And whereas clause (76) of Section 2 of the said Act define the term 'related party'. In sub-clause (v) of the said clause, the word 'or' has appeared inadvertently and therefore defeating the intention of that clause.

And whereas difficulties have arisen regarding compliance with the provision.

Now, therefore, in exercise of the powers conferred by sub-section (1) of Section 470 of the Companies Act, 2013 the Central Government hereby makes the following order to remove the above said difficulties, namely :-

**1. Short title and commencement.**

(1) This order may be called the Companies (Removal of Difficulties) Fifth Order, 2014.

(2) It shall come into force on the date of its publication in the Official Gazette.

2. In sub-clause (v) of clause (76) of section 2, for the words "or holds", the words "and holds" shall be substituted.

[F. No. 2/5/2014-CL. VI

**AMARDEEP SINGH BHATIA**

*Jt. Secy*

**2****MINISTRY OF CORPORATE AFFAIRS****ORDER**

New Delhi, the 24th July, 2014

**S.O. 1894 (E).**—Whereas the Companies Act, 2013 (18 of 2013) (hereinafter referred to as the said Act) received the assent of the President on 29th August, 2013 and section 1 thereof came into force on the same date;

And whereas clause (76) of section 2 of the Act, which provides for definition of the term "related party" has come into force on 12th September, 2013;

And whereas difficulties have arisen in interpreting the said clause due to the absence of the word "relative" in sub-clause (iv), although such word has occurred in sub-clauses (i), (ii), (iii) and (v) of the aforesaid clause (76) resulting in a disharmonious interpretation of the said definition.

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 470 of the Companies Act, 2013 (18 of 2013), the Central Government hereby makes the following Order to remove the aforesaid difficulties, namely:—

**1. Short title and commencement.**

- (1) This Order may be called the Companies (Removal of difficulties) Sixth Order, 2014.
- (2) It shall come into force on the date of its publication in the Official Gazette.

**2. Amendment of section 2.**

In section 2 of the Companies Act, 2013, in clause (76), in sub-clause (iv), after the word "manager", the word "or his relative" shall be inserted.

[F. No. 2/14/2014-CL.V]

**AMARDEEP SINGH BHATIA**

*Jt. Secy.*

**3****MINISTRY OF CORPORATE AFFAIRS****ORDER**

New Delhi, the 13th February, 2015

**S.O. 504(E).**—Whereas, the Companies Act, 2013 (18 of 2013) (hereinafter referred to as the said Act) received the assent of the President on the 29th August, 2013;

And whereas, clause (85) of section 2 of the said Act provides for definition of the term “small company”;

And whereas, clause (b) of sub-section (11) of section 186 of the said Act provides that the requirements of provisions of section 186 [except sub-section (1) of the said section] shall not apply to any acquisition made by a non-banking financial company registered under Chapter IIIB of the Reserve Bank of India Act, 1934 (2 of 1934) and any other company whose principal business is acquisition of securities;

And whereas, such provisions of clause (85) of section 2 and section 186 of the said Act had come into force on the 1st day of April, 2014;

And whereas, the following difficulties have arisen in giving effect to the above provisions of the said Act:—

- (a) According to clause (85) of section 2, a company may be treated as a ‘small company’ if it meets either of the conditions provided therein thereby making the second limit unrestricted or inconsequential. Difficulties have arisen in this regard as companies which, though, meet one of the criteria but exceed the monetary limit in respect of second criteria excessively are also getting classified as ‘small companies’; and
- (b) in clause (b) of sub-section (11) of section 186, in the absence of provisions for exemption to a banking company or an insurance company or a housing finance company making acquisition of securities in its ordinary course of business, a difficulty has arisen that such companies cannot make any acquisition of securities in their ordinary course of business;

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 470 of the Companies Act, 2013 (18 of 2013), the Central Government hereby makes the following Order to remove the aforesaid difficulties, namely:-

- (1) **Short title and commencement.** – (1) This Order may be called the Companies (Removal of Difficulties) Order, 2015.
- (2) It shall come into force on the date of its publication in the Official Gazette.

2. In the Companies Act, 2013 (hereinafter referred to as the said Act),—

- (a) in section 2, in clause (85), in sub-clause (i), for the word “or” occurring at the end, the word “and” shall be substituted; and
- (b) in section 186 of the said Act, in sub-section (11), in clause (b), after item (iii), the following item shall be inserted, namely :—

“(iv) made by a banking company or an insurance company or a housing finance company, making acquisition of securities in the ordinary course of its business.”.

[F. No. 1/13/2013-CL.V-Part]

**AMARDEEP SINGH BHATIA**

*Jt. Secy.*

4

**MINISTRY OF CORPORATE AFFAIRS**

**NOTIFICATION**

New Delhi, the 17th July, 2014

**G.S.R. 507(E).**—In exercise of the powers conferred by sub-clause (ix) of clause (76) of Section 2, read with sub-sections (1) and (2) of Section 469 of the Companies Act, 2013 (18 of 2013), the Central Government hereby makes the following rules, namely:—

1. (1) These rules may be called the Companies (Specification of definitions details) Amendment Rules, 2014.  
(2) They shall come into force on the date of their publication in the Official Gazette.
2. In the Companies (Specification of definitions details) Rules, 2014, in rule 3, after the words ‘a director’ the words ‘other than an independent director’, shall be inserted.

[F. No. 01/13/2013 (Part-I)-CL-V]

**AMARDEEP SINGH BHATIA**

*Jt. Secy.*

*Note :* The principal rules were published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R. 238(E), dated the 31st March, 2014.



## Chapter II

# INCORPORATION OF COMPANY AND MATTERS INCIDENTAL THERETO

### Circulars and Amendment Rules issued by Ministry under this chapter so far:

Sl. No.	Particulars	Impact on Lesson of ACLP
1.	General Circular No. 29/2014 dated 11th July, 2014	Lesson 1 Company Formation and Conversion
2.	General Circular No. 31/2014 dated 19th July, 2014	Lesson 1 Company Formation and Conversion
3.	Companies (Incorporation) Amendment Rules, 2015 dated 1st May, 2015	Lesson 1 Company Formation and Conversion
4.	Companies (Incorporation) Second Amendment Rules, 2015 dated 29th May, 2015	Lesson 1 Company Formation and Conversion
5.	MCA Notification No. SO 3388(E) dated 14th December, 2015	Lesson 1 Company Formation and Conversion
6.	MCA Notification No. SO 218(E) dated 22nd January, 2016	Lesson 1 Company Formation and Conversion
7.	Companies (Incorporation) Amendment Rules, 2016 dated 22nd January, 2016	Lesson 1 Company Formation and Conversion

MCA vide Notification No. GSR 464(E) dated 5th June, 2015 has provided various exemptions to private companies. Students are advised to see page No. 206 for the same.

MCA vide Notification No. GSR 466(E) dated 5th June, 2015 has provided various exemptions to section 8 companies. Students are advised to see page No. 216 for the same.

### **I. Registration of the names of companies to be in consonance with the provisions of the Emblems and Names (Prevention of Improper Use) Act 1950.**

#### **Issue involved**

Whether the Registration of the names of companies to be in consonance with the provisions of the Emblems and Names (Prevention of Improper Use) Act 1950?

### Clarification issued

The Ministry vide its Circular No. 29/2014 dated July 11, 2014 directed that while allotting names to Companies/ Limited Liability Partnerships, the Registrar of Companies concerned should exercise due care to ensure that the names are not in contravention of the provisions of the Emblems and Names (Prevention of Improper Use) Act, 1950. To this end it is necessary that Registrars are fully familiar with the provisions of the said Act.

### III. Amendments in Companies Incorporation Rules, 2015

There are several amendments incorporated in Companies (Incorporation) Amendment Rules, 2014, which are as under:

- (a) Rule 5 relating to penalty for One Person Company has been omitted. The revised penal provision for One Person Company has been introduced as Rule 7A. (Refer Ch-1)

- (b) Substitution in Rule 7 (1):

The rule provided that “A private company other than a company registered under section 8 of the Act having paid up share capital of fifty lakhs rupees or less or average annual turnover during the relevant period is two crore rupees or less may convert itself into one person company by passing a special resolution in the general meeting.”

After the amendment the rule is read as under:

“A private company other than a company registered under section 8 of the Act having paid up share capital of fifty lakhs rupees or less and average annual turnover during the relevant period is two crore rupees or less may convert itself into one person company by passing a special resolution in the general meeting.”

- (c) Rule 7A has been introduced after Rule 7, which is read as under:

7A. *Penalty.* – if a One Person Company or any officer of such company contravenes any of the provisions of these rules, the One Person Company or any officer of the such Company shall be punishable with fine which may extend to five thousand rupees and with a further fine which may extend to five hundred rupees for every day after the first offence during which such contravention continues”;

- (d) In rule 8, in sub-rule (2), in clause(b), in sub-clause (xi), in the proviso, after the words and figures “under section 248 of the Act”. The words, figures and brackets “or under section 560 of Companies Act, 1956 (1 of 1956)” has been inserted.

After the amendment the sub-clause is read as under:

(xi) the proposed name is identical to the name of a company dissolved as a result of liquidation proceeding and a period of two years have not elapsed from the date of such dissolution:

Provided that if the proposed name is identical with the name of a company which is struck off in pursuance of action under section 248 of the Act **or under section 560 of Companies Act, 1956 (1 of 1956)**, then the same shall not be allowed before the expiry of twenty years from the publication in the Official Gazette being so struck off;

- (e) in order to supplement the ease of doing business, rule 16(1)(q) requiring specimen signature and latest photograph duly verified by the banker or notary in form INC 10 has been substituted for self attestation.

After the amendment it is read as under:

(q) the promoter or first director shall attest his signature and latest photograph in Form No. INC. 10

- (f) Insertion of Rule 36, introducing the concept of Integrated Incorporation.

For the purpose of simplifying the filing of forms for incorporation of a company, the integrated process has been introduced in the form of INC 29. The application for allotment of Din upto 3 Directors, reservation of name, incorporation of company and appointment of Directors of the proposed company is to be filled in Form No. INC-29, for One Person Company, Private Company, Public company and Producer company. The additional fee of Rs. 2000 over and above registration fee is to be paid.

- (g) Form No. INC-7, INC-10, INC-11 and INC-22 have been substituted. The same are available at [www.mca.gov.in](http://www.mca.gov.in).

#### IV. Companies (Incorporation) Second Amendment Rules, 2015

- (a) in rule 12, the following proviso was inserted: “Provided that in case pursuing of any of the objects of a company requires registration or approval from sectoral regulators such as Reserve Bank of India, Securities and Exchange Board, registration or approval, as the case may be, from such regulator shall be obtained by the company before pursuing such objects and a declaration in this behalf shall be submitted at the stage of incorporation of the company.”;

The amended rules will be read as under :

An application shall be filed, with the Registrar within whose jurisdiction the registered office of the company is proposed to be situated, in **Form No. INC.2 (for One Person Company) and Form no. INC.7 (other than One Person Company)** along with the fee as provided in the **Companies (Registration offices and fees) Rules, 2014** for registration of a company:

“Provided that in case pursuing of any of the objects of a company requires registration or approval from sectoral regulators such as Reserve Bank of India, Securities and Exchange Board, registration or approval, as the case may be, from such regulator shall be obtained by the company before pursuing such objects and a declaration in this behalf shall be submitted at the stage of incorporation of the company.

- (b) rule 24 and E-form INC -21 relating to Declaration at the time of commencement of business has been omitted;
- (c) Form INC-13 and Form INC-16, Substituted with new Form INC-13 and Form INC-16, (the same are available at [www.mca.gov.in](http://www.mca.gov.in))

#### V. MCA Notification NO. S.O. 3388(E) dated 14th December 2015

Provision of sections 13 and 14 of companies Act, 2013 has come into force from 14<sup>th</sup> December, 2015

#### VI. MCA Notification NO. S.O. 218(E) dated 22<sup>nd</sup> January 2016

Central Government has established a Central Registration Centre (CRC) having territorial jurisdiction all over India, being administered by ROC, Delhi, for discharging or carrying out the function of processing and disposal of applications for reservation of names made in E-Form INC-1.

Processing and approval of name or names proposed in e-Form No. INC-29 shall continue to be done by the respective Registrar of Companies having jurisdiction over incorporation of companies under the Companies Act, 2013.

This notification has come into force from 26th January, 2016.

#### VII. Companies (Incorporation) Amendment Rules, 2016

- A. In rule 8 sub- rule 2 following points has been omitted

- (a) sub-clause (ii) of clause (b)(proposed name not in consonance with the principals objects of the company as set out in the MOA)
- (b) sub-clause (x) of clause (b) has been (abbreviated names based on the name of the promoters )
- (c) sub-clause (xvii) of clause (b) has been.(Proposed name intended to produce a misleading impression regarding scale or scope of activities )

Also in rule 8 sub rules 3 and (4) has been omitted

B. rule 9 has been substituted with the following –

“Reservation of name - An application for the reservation of a name has been made in Form No. INC.1 along with the fee as provided in the Companies (Registration Offices and Fees) Rules, 2014 which may be approved or rejected, as the case may be, by the Registrar, Central Registration Centre.”

C. In rule 36 sub-rule 12 after sub- clause (b) the following has been inserted, –

‘(ba) After the resubmission of the documents and on completion of second opportunity, if the registrar still finds that the documents are defective or incomplete, he shall give third opportunity to remove such defects or deficiencies;’

Provided that the total period for re-submission of documents shall not exceed a total period of thirty days.

In rule 36 sub-rule 12 in sub-clause (c), for the words ‘two opportunities’, the words ‘three opportunities’ has been substituted ,the following amended rule read as under –

“in case the registrar reserved the opinion that the document is defective or incomplete in any respect after giving three opportunities, the E-form INC- 29 of the proposed companies shall be rejected“.

D. Form No. INC – 1 has been substituted by the new Form which is available on MCA website.

The text of the Circulars issued under this Chapter appended as under:

1

**General Circular No.29/2014**

**File No.2/2/2014-CL-V**

**Government of India**

**Ministry of Corporate Affairs**

5th floor, 'A' Wing, Shastri Bhawan  
Rajendra Prasad Road, New Delhi-110 001

Dated: 11th July, 2014

To

All Regional Directors,

All Registrars of Companies.

**Subject: Registration of names of the Companies shall be in consonance with the provisions of the Emblems and Names (Prevention of Improper Use) Act, 1950 -reg.**

Sir,

In continuation of this Ministry's circular No. 02/2014 and 26/2014 dated 11.02.2014 and 27.06.2014 respectively, it is hereby directed that while allotting names to Companies/Limited Liability Partnerships, the Registrar of Companies concerned should exercise due care to ensure that the names are not in contravention of the provisions of the Emblems and Names (Prevention of Improper Use) Act, 1950. To this end it is necessary that Registrars are fully familiar with the provisions of the said Act.

2. This issues with the approval of the competent authority.

Yours faithfully

Sd/-

**(Kamna Sharma)**

Assistant Director

Tel: 23387263

1. E-Governance Cell and Web Contents Officer to place this Circular on Ministry's Website.

**2****General Circular No. 31/2014****F. No. : MCA21/152/2014-eGov Cell****Government of India****Ministry of Corporate Affairs**5th Floor, A Wing, Shastri Bhavan  
Dr. R. P. Road, New Delhi

Dated: 19 July, 2014

To

All Regional Directors

All Registrars of Companies

**Subject : Extension of validity period of reserved names – reg.**

Sir,

The Service Provider of MCA-21 has brought to the notice of the Ministry that the letters of intimation issued in respect of 9522 cases for reservation of names (INC-1) allow the applicants to use reserved names within 60 days of date of intimation. This is at variance with the implementation in the MCA-21. This is causing inconvenience to the stakeholders.

In view of this, the validity of 1930 of the above mentioned 9522 cases for reservation of names which have expired as on the date of this circular is hereby extended upto 18th August, 2014. Further, in case of 6864 cases where names have been reserved and yet are to be used, the time period as indicated in the letters of intimation is allowed. All applicants may accordingly be advised to file relevant e- forms for incorporation of companies under Companies Act, 2013 well before the validity period.

This issues with the approval of competent authority.

Yours faithfully,

**(Animesh Bose)**

Assistant Director (Policy)

*Copy to:*

1. e-Governance Section and web contents Officer to place this circular on the Ministry website.
2. Guard File.

## 3

**GOVERNMENT OF INDIA**  
**MINISTRY OF CORPORATE AFFAIRS**  
**NOTIFICATION**

New Delhi 1<sup>st</sup> May, 2015

**G.S.R.....-** In exercise of the powers conferred by section 3, section 4, sub-sections (5) and (6) of section 5, section 6, sub-section (1) and (2) of section 7, sub-sections (1) and (2) of section 8, clauses (a) and (b) of sub-section (1) of section 11, sub-sections (2), (3), (4) and (5) of section 12, sub-sections (3), (4) and the proviso to sub-section (5) of section 13, sub-section (2) of section 14, sub-section (1) of section 17, sub-sections (1) and (2) of section 20 read with sub-sections (1) and (2) of section 469 of the Companies Act, 2013 (18 of 2013), the Central Government hereby makes the following amendments to the Companies (Incorporation) Rules, 2014, namely:-

1. (1) These rules may be called the Companies (Incorporation) Amendment Rules, 2015.

(2) They shall come in to force on the date of their publication in the Official Gazette.

2. In the Companies (Incorporation) Rules, 2014,-

(a) rule 5 shall be omitted;

(b) in rule 6, for sub-rule (11), for the words “having paid up share capital of fifty lakhs rupees or less or average annual turnover”, the words “having paid up share capital of fifty lakhs rupees or less and average annual turnover” shall be substituted;

(c) in rule 7, in sub-rule (1), for the words “having paid up share capital of fifty lakhs rupees or less or average annual turnover”, during the relevant period is, the words “having paid up share capital of fifty lakhs rupees or less and average annual turnover during the relevant period” shall be substituted;

(d) after rule 7, the following rules shall be inserted, namely :-

“7A. **Penalty.**- If a One Person Company or any officer of such company contravenes any of the provisions of these rules, the One Person Company or any officer of the such company shall be punishable with fine which may extend to five thousand rupees and with a further fine which may extend to five hundred rupees for every day after the first offence during which such contravention continues”;

(e) in rule 8, in sub-rule (2). In clause (b), in sub-clause (xi), in the proviso, after the words and figures “under section 248 of the Act”, the words, figures and brackets “or under section 560 of the Companies Act, 1956 (1 of 1956)” shall be inserted;

(f) in rule 16, in sub-rule (1), for clause (q), the following shall be substituted, namely :-

“(q) the promoter or first director shall self attest his signature and latest photograph in Form No. INC. 10”.

(g) after rule 35, the following rules shall be inserted namely:-

**36. Integrated Process for Incorporation.**- (1) For the purpose of simplifying the filing of forms for incorporation of a company, the integrated process shall apply with effect from **01/05/2015**.

- (2) For the purpose of sub-rule (1), the application for allotment of Director Identification Number upto three Directors, reservation of a name, incorporation of company and appointment of Directors of the proposed company shall be filed in Integrated **Form No. INC-29, For One Person Company, private company, public company and producer company**, with the Registrar within whose jurisdiction the registered office of the company is proposed to be situated, along with the fee of rupees two thousand in addition to the registration fee as specified in Companies (Registration of Offices and Fees) Rules, 2014.
- (3) For the purposes of filing Integrated Incorporation form, the particulars of maximum of three directors shall be allowed to be filled in INC- 29 and allotment of Director Identification Number of maximum of three proposed directors shall be permitted in Form INC-29 in case of proposed directors not having approved Director Identification Number .
- (4) The promoter or applicant of the proposed company shall propose only one name in e-form No. INC- 29.
- (5) The promoter or applicant of the proposed company may prepare Memorandum of Association as per templates in Form INC – 30 and may opt for templates of Articles of association in Form INC-31 in accordance with the provisions of rule 13 for preparation of Memorandum of Association and Article of Association.
- (6) The promoter or the applicant shall sign and witness, the Memorandum of Association and Articles of Association in the forms downloaded from the portal of the Ministry of Corporate Affairs and scanned legibly and attach to e-form INC-29 in accordance with the provisions of rule 13 for preparation of Memorandum of Association and Articles of Association.
- (7) The facility to file Integrated for incorporation in Form INC- 29 is available as an option to the process for separate applications for allotment of Director Identification Number , reservation of name and Incorporation of a company as provided in these rules.
- (8) For an application filed using the integrated process of incorporation as provided in this rule, there provisions of sub- clause (i) of sub-section (5) of section 4 of the Act and rule 9 of these rules shall not apply.
- (9) A Company using the provisions of this rule may furnish verification of its registered office under sub-section (2) of section 12 of the Act by filling e- Form INC- 29 in which case the company shall attach along with such E- Form INC-29, any of the documents referred to in sub-rule (2) of rule 25.
- (10) The requirement of filing e-form INC-28 may be dispensed with if, the proposed company maintains its registered office at the given correspondence address.
- (11) The registrar within whose jurisdiction the registered office of the company is proposed to be situated shall process INC-29 including application for allotment of Director identification number.
- (12) (a) Where the Registrar, on examining e-form INC-29, finds that it is necessary to call for further information or finds such application or document to be defective or incomplete in any respect , he shall give intimation to the applicant to remove the defects and re-submit the e-form within fifteen days from the date of such intimation given by the registrar.
- (b) After the resubmission of the document , if the registrar still finds that the document is defective or incomplete in any respect, he shall give one more opportunity of fifteen days to remove such defects or deficiencies.
- (c) In case, the registrar is of the opinion that the document is defective or incomplete in any respect after giving such two opportunities, the e-form INC-29 of the proposed company shall be rejected.
- (13) The certificate of Incorporation shall be issued by the registrar in Form No. INC – 11.



(14) In Annexure , in Form No. INC – 11, for the words, figures and brackets “ and rule 8 of the Companies (Incorporation) Rules, 2014”, the words, figures and brackets “ and rule 18 of the Companies (Incorporation) Rules, 2014”. Shall be substituted.

(15) in Annexure,–

(a) for Form No. INC-7, INC-10, INC-11 AND INC -22, the following form shall, respectively be substituted, namely:-

The forms are available at [www.mca.gov.in](http://www.mca.gov.in)

[F.NO. 01/13/203 CL-V(Part- I)]

**(Amardeep Singh Bhatia)**

Joint Secretary to the Central Govt. Of India

**Note:** The principal rules were published in the Gazette of India, Extraordinary, Part- II, Section 3, sub-section (i), vide number.. G.S.R. 250(e)), dated the 31<sup>st</sup> March, 2014.

## 4

**Government of India****Ministry of Corporate Affairs****NOTIFICATION**

New Delhi, Dated the 29th May, 2015

**G.S.R. (E).** - In exercise of the powers conferred by section 7 read with sub-sections (1) and (2) of section 469 of the Companies Act, 2013 (18 of 2013), the Central Government hereby makes the following rules further to amend the Companies (Incorporation) Rules, 2014, namely:-

1. (1) These rules may be called the Companies (Incorporation) Second Amendment Rules, 2015.

(2) They shall come into force from the date of their publication in the Official Gazette.

2. In the Companies (Incorporation) Rules, 2014,-

(a) in rule 12, the following proviso shall be inserted, namely:-

“Provided that in case pursuing of any of the objects of a company requires registration or approval from sectoral regulators such as Reserve Bank of India, Securities and Exchange Board, registration or approval, as the case may be, from such regulator shall be obtained by the company before pursuing such objects and a declaration in this behalf shall be submitted at the stage of incorporation of the company.”;

(b) rule 24 shall be omitted;

(c) in the Annexure, -

(i) for the existing Form INC-13 and Form INC-16, the following Form INC-13 and Form INC-16 shall respectively be substituted, namely:-

(ii) Form INC-21 shall be omitted.

The forms are available on [mca.gov.in](http://mca.gov.in).

(F.No. 1/13/2013-CL-V)

**Amardeep Singh Bhatia**  
Joint Secretary to the Government of India

**5****MINISTRY OF CORPORATE AFFAIRS****NOTIFICATION****New Delhi, the 14th December, 2015**

S. O. 3388(E).—In exercise of the powers conferred by sub-section (2) of section 1 of the Companies (Amendment) Act, 2015 (21 of 2015), the Central Government hereby appoints the 14th day of December, 2015 as the date on which the provisions of section 13 and 14 of the said Act shall come into force.

**[F. No. 1/6 /2015-CL. V]****AMARDEEP SINGH BHATIA, Jt. Secy****6****MINISTRY OF CORPORATE AFFAIRS****NOTIFICATION****New Delhi, the 22nd January, 2016**

**S.O. 218(E).**—In exercise of the powers conferred by sub-sections (1) and (2) of section 396 of the Companies Act, 2013 (18 of 2013) (herein after referred to as the Act), the Central Government hereby establishes a Central Registration Centre (CRC) having territorial jurisdiction all over India, for discharging or carrying out the function of processing and disposal of applications for reservation of names under the provisions of the said Act.

2. The CRC shall function under the administrative control of Registrar of Companies, Delhi (ROC Delhi), who shall act as the Registrar of the CRC until a separate Registrar is appointed to the CRC. The CRC shall process applications for reservation of name i.e., e-Form No. INC-1 filed along with the prescribed fee as provided in the Companies (Registration of Offices and Fees) Rules, 2014.

3. Processing and approval of name or names proposed in e-Form No. INC-29 shall continue to be done by the respective Registrar of Companies having jurisdiction over incorporation of companies under the Companies Act, 2013 as per the provisions of the Act and the rules made thereunder.

4. The CRC shall be located at Indian Institute of Corporate Affairs (IICA), Plot No. 6,7, 8, Sector 5, IMT Manesar, District Gurgaon (Haryana), Pin Code-122050.

5. This notification shall come into force from 26th January, 2016.

**[F. No. A-42011/03/2016-Ad.II]****MANOJ KUMAR, Jt. Secy.**

## 7

[To be published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i)]

**GOVERNMENT OF INDIA**  
**MINISTRY OF CORPORATE AFFAIRS**

**Notification**

**New Delhi, the 22<sup>nd</sup> January, 2016**

**G.S.R. (E).**- In exercise of the powers conferred by sub-sections (1) and (2) of section 469 of the Companies Act, 2013 (18 of 2013), the Central Government hereby makes the following rules further to amend the Companies (Incorporation) Rules, 2014, namely:-

**I. Short title and commencement.** (1) These rules may be called the Companies (Incorporation) Amendment Rules, 2016.

(2) They shall come into force from 26<sup>th</sup> day of January, 2016

2. In the Companies (Incorporation) Rules, 2014 (herein after referred to as the principal rules), in rule 8,-

(i) sub- rule 2

(a) sub-clause (ii) of clause (b) shall be omitted;

(b) sub-clause (x) of clause (b) shall be omitted; and

(c) sub-clause (xvii) of clause (b) shall be omitted.

(ii) sub-rule (3) shall be omitted.

(iii) sub-rule (4) shall be omitted.

3. In the principal rules, for Rule 9 the following shall be substituted namely: -

“Reservation of name – An application for the reservation of a name shall be made in Form No. INC.1 along with the fee as provided in the Companies (Registration offices and fees) Rules, 2014 which may be approved or rejected, as the case may be, by the Registrar, Central Registration Centre.”

(4) In the principal rules, in rule 36, in sub-rule(12),-

(i) after sub-clause (b), the following shall be inserted.-

‘(ba) After the resubmission of the documents and on completion of second opportunity, if the registrar still finds that the documents are defective or incomplete, he shall give third opportunity to remove such defects or deficiencies;’

Provided that the total period for re-submission of documents shall not exceed a total period of thirty days.

(ii) in sub-clause (c), for the words ‘two opportunities’, the words ‘three opportunities’ shall be substituted.

(5) In the principal rules, for the existing Form No.INC-1, the following form no. INC- 1 shall be substituted.

Form is available on MCA website.

**[F. No.1/13/2013 CL-V-part-II]**

**AMARDEEP SINGH BHATIA, Jt. Secy**

Note: The principal rules were published in the Gazette of India, Extraordinary, Part-II, Section 3, sub-section (i) *Vide* number G.S.R. 250(E) dated the 31<sup>st</sup> March, 2014, amended *Vide* number G.S.R. 349(E) dated 1<sup>st</sup> May, 2015 and lastly *Vide* number G.S.R.442 (E) dated 29.05.2015.

# Chapter III

## PROSPECTUS AND ALLOTMENT OF SECURITIES

### Circulars and Amendment Rules issued by the Ministry under this chapter:

Sl. No.	Particulars	Impact on Lesson of ACLP
1.	Companies (Prospectus and Allotment of Securities) Amendment Rules, 2014 dated 30th June, 2014	Lesson 3 Issue and allotment of Securities
2.	General Circular No. 43/2014 dated 13th November, 2014	General

### I. Offer or invitation for non-convertible debentures under Companies (prospectus and Allotment of Securities) Rules 2014.

*Rule 14(2) of Companies (Prospectus and Allotment of Securities) Rules 2014 reads as under*

A company shall not make a private placement of its securities unless -

- (a) the proposed offer of securities or invitation to subscribe securities has been previously approved by the shareholders of the company, by a Special Resolution, for each of the Offers or Invitations:

Provided that in the explanatory statement annexed to the notice for the general meeting the basis or justification for the price (including premium, if any) at which the offer or invitation is being made shall be disclosed:

Provided further that in case of offer or invitation for non-convertible debentures, it shall be sufficient if the company passes a previous special resolution only once in a year for all the offers or invitation for such debentures during the year.

#### Issue involved

What is the time limit for passing the special resolution in case of offer or invitation for non-convertible debentures issued within six months of commencement of Companies (prospectus and Allotment of Securities) Rules 2014?

#### Amendment Rules issued

The Ministry vide the Companies (Prospectus and Allotment of Securities) Amendment Rules 2014 dated June 30, 2014 has made the following amendment in this regard:

after the second proviso, the following proviso shall be inserted, namely:—

“Provided also that in case of an offer or invitation for non-convertible debentures referred to in the second proviso, made within a period of six months from the date of commencement of these rules, the special resolution referred to in the second proviso may be passed within the said period of six months from the date of commencement

of these rules.”.

*After amendment Rule 14(2) of Companies (Prospectus and Allotment of Securities) Rules, 2014 reads as under:*

*A company shall not make a private placement of its securities unless -*

- (a) the proposed offer of securities or invitation to subscribe securities has been previously approved by the shareholders of the company, by a Special Resolution, for each of the Offers or Invitations:

Provided that in the explanatory statement annexed to the notice for the general meeting the basis or justification for the price (including premium, if any) at which the offer or invitation is being made shall be disclosed:

Provided further that in case of offer or invitation for non-convertible debentures, it shall be sufficient if the company passes a previous special resolution only once in a year for all the offers or invitation for such debentures during the year.

“Provided also that in case of an offer or invitation for non-convertible debentures referred to in the second proviso, made within a period of six months from the date of commencement of these rules, the special resolution referred to in the second proviso may be passed within the said period of six months from the date of commencement of these rules.”

## **II. Applicability of Chapter III of Companies Act, 2013 to an issue of FCCBs or FCBs**

### **Issue involved**

- Whether the provisions of Chapter III of the Companies Act, 2013 applicable to the issue of Foreign Currency Convertible Bonds (FCCBs) and Foreign Currency Bonds (FCBs) by Indian companies exclusively to persons resident outside India in accordance with applicable sectoral regulatory provisions?

### **Clarification issued**

The Ministry of Corporate Affairs vide Circular no. 43/2014 dated November 13, 2014 clarified that the issue of FCCBs and FCBs by companies is regulated by the regulations of Ministry of Finance on “Issue of Foreign Currency Convertible Bonds and Ordinary Shares (Through Depository Receipts Mechanism) Scheme, 1993” and Reserve Bank of India through its various directions/regulations. **Hence unless otherwise provided in the said Scheme or the directions/regulations issued by Reserve Bank of India, provisions of Chapter III of the Companies Act, 2013 shall not apply to an issue of FCCBs or FCBs made exclusively to persons resident outside India in accordance with above regulations.**

The text of the Amended Rules issued under this Chapter appended as under:

1

THE GAZETTE OF INDIA: EXTRAORDINARY [PART II—SEC. 3(i)]

MINISTRY OF CORPORATE AFFAIRS

NOTIFICATION

New Delhi, the 30th June, 2014

**G.S.R. 424 (E).**—In exercise of the powers conferred by section 42 read with sub-section (1) of section 469 of the Companies Act, 2013 (18 of 2013), the Central Government hereby makes the following rules to amend the Companies (Prospectus and Allotment of Securities) Rules, 2014, namely:—

1. (1) These rules may be called the Companies (Prospectus and Allotment of Securities) Amendment Rules, 2014.

(2) They shall come into force from the date of their publication in the Official Gazette.

2. In the Companies (Prospectus and Allotment of Securities) Rules, 2014, in rule 14, in sub-rule (2), in clause (a), after the second proviso, the following proviso shall be inserted, namely:—

“Provided also that in case of an offer or invitation for non-convertible debentures referred to in the second proviso, made within a period of six months from the date of commencement of these rules, the special resolution referred to in the second proviso may be passed within the said period of six months from the date of commencement of these rules.” .

[F. No 1/21/2013-CL-V]

**AMARDEEP SINGH BHATIA**

*Jt. Secy.*

**Note:** The Principal rules were published in the Official Gazette vide notification number G.S.R. 251(E) dated 31st March, 2014



**2****General Circular No. 43/2014****No. 1/21 /2013-CL-V****Government of India****Ministry of Corporate Affairs**5th Floor, "A" Wing, Shastri Bhavan,  
Dr R.P. Road, New Delhi

Dated: 13th November, 2014

To

All Regional Directors,

All Registrars of Companies.

**Subject: Issue of Foreign Currency Convertible Bonds (FCCBs) and Foreign Currency Bonds (FCBs) - Clarification regarding applicability of provisions of Chapter III of the Companies Act, 2013.**

Sir,

The Ministry has been receiving references from stakeholders seeking clarity on applicability of provisions of Chapter III of the Companies Act, 2013 (Act) to the issue of Foreign Currency Convertible Bonds (FCCBs) and Foreign Currency Bonds (FCBs) by Indian companies exclusively to persons resident outside India in accordance with applicable sectoral regulatory provisions.

2. The matter has been examined in the Ministry in consultation with Ministry of Finance and SEBI. The issue of FCCBs and FCBs by companies is regulated by the Ministry of Finance's regulations contained in *Issue of Foreign Currency Convertible Bonds and Ordinary Shares (Through Depository Receipts Mechanism) Scheme, 1993* (Scheme) and Reserve Bank of India through its various directions/regulations. It is, accordingly, clarified that unless otherwise provided in the said Scheme or the directions/regulations issued by Reserve Bank of India, provisions of Chapter III of the Act shall not apply to an issue of a FCCB or FCB made exclusively to persons resident outside India in accordance with the above mentioned regulations.

3. This issues with the approval of the competent authority.

Yours faithfully,

**(KMS Narayanan)**

Assistant Director (Policy)

Copy to:-

1. e-Governance Section and web contents Officer to place this circular on the Ministry website.
2. Guard File

# Chapter IV

## SHARE CAPITAL AND DEBENTURES

**Circulars and Amendment Rules issued by the Ministry under this chapter so far:**

Sl. No.	Particulars	Impact on Lesson of ACLP
1.	Companies (Share Capital and Debentures) Amendment Rules, 2015 dated 18th March, 2015	Lesson 3 Issue and Allotment of Securities  Lesson 4 Alteration in Share Capital  Lesson 5 Issue and Redemption of Debentures and Bonds
2.	Companies (Share Capital and Debentures) Second Amendment Rules, 2015 dated 29th May, 2015	Lesson 3 Issue and Allotment of Securities
3.	Companies (Share Capital and Debentures) Third Amendment Rules, 2015 dated 6th November, 2015	Lesson 5 Issue and Lesson 5 Issue and Redemption of Debentures and Bonds

### **I. Amendment relating to applicability of Companies (Share Capital and Debentures) Rules, 2014**

Rule 3 of Companies (Share Capital and Debentures) Rules, 2014 reads as under:

**3. Application.** – The provisions of these rules shall apply to

- (a) all unlisted public companies;
- (b) all private companies; and
- (c) listed companies,

so far as they do not contradict or conflict with any other provision framed in this regard by the Securities and Exchange Board of India.

The Ministry vide Companies (Share Capital and Debentures) Amendment Rules, 2015 substituted Rule 3 as under:

**3. Application.** – The provisions of these rules shall apply to

- (a) all unlisted public companies;

- (b) all private companies; and
- (c) listed companies so far as they do not contradict or conflict with any other regulation framed in this regard by the Securities and Exchange Board of India.

### **Signatory in Share Certificates**

Rule 5(3)(b) of Companies (Share Capital and Debentures) Rules, 2014 reads as under:

- (3) Every share certificate shall be issued under the seal of the company, which shall be affixed in the presence of, and signed by-
  - (b) the secretary or any person authorised by the Board for the purpose:

Provided that, in companies wherein a Company Secretary is appointed under the provisions of the Act, he shall be deemed to be authorised for the purpose of this rule:

Provided further that, if the composition of the Board permits of it, at least one of the aforesaid two directors shall be a person other than the managing or whole-time director:

Provided also that, in case of a One Person Company, every share certificate shall be issued under the seal of the company, which shall be affixed in the presence of and signed by one director or a person authorized by the Board of Directors of the company for the purpose and the Company Secretary, or any other person authorized by the Board for the purpose.

Ministry vide Companies (Share Capital and Debentures) Amendment Rules, 2015 omitted the first proviso which states that in companies wherein a company secretary is appointed under the provisions of the Act, he shall be deemed to be authorised for the purpose of this Rule.

Accordingly Rule 5(3) reads as under:

- (3) Every share certificate shall be issued under the seal of the company, which shall be affixed in the presence of, and signed by-
  - (b) the secretary or any person authorised by the Board for the purpose:

Provided that, if the composition of the Board permits of it, at least one of the aforesaid two directors shall be a person other than the managing or whole-time director:

Provided further that, in case of a One Person Company, every share certificate shall be issued under the seal of the company, which shall be affixed in the presence of and signed by one director or a person authorized by the Board of Directors of the company for the purpose and the Company Secretary, or any other person authorized by the Board for the purpose.

### **Time limit for issue of Duplicate Share Certificates**

Rule 6(2)(c) of Companies (Share Capital and Debentures) Rules, 2014 reads as under:

6(2)(c) In case unlisted companies, the duplicate share certificates shall be issued within a period of three months and in case of listed companies such certificate shall be issued within fifteen days, from the date of submission of complete documents with the company respectively.

Ministry vide Companies (Share Capital and Debentures) Amendment Rules, 2015 amended the time limit for issue of duplicate share certificates to 45 days instead of 15 days. Accordingly, the revised rules read as under:

- 6(2)(c) In case unlisted companies, the duplicate share certificates shall be issued within a period of three

months and in case of listed companies such certificate shall be issued within forty five days, from the date of submission of complete documents with the company respectively.

### **Reference to Employee under issue of Employee Stock Option**

Explanation to Rule 12(1) clause (c) of Companies (Share Capital and Debentures) Rules, 2014 reads as under:

*Explanation* : For the purposes of clause (b) of sub-section (1) of section 62 and this rule “Employee” means –

- (c) an employee as defined in clauses (a) or (b) of a subsidiary, in India or outside India, or of a holding company of the company or of an associate company but does not include-
  - (i) an employee who is a promoter or a person belonging to the promoter group; or
  - (ii) a director who either himself or through his relative or through any body corporate, directly or indirectly, holds more than ten percent of the outstanding equity shares of the company.

Ministry vide Companies (Share Capital and Debentures) Amendment Rules, 2015 amended the explanation by removing the employee of an associate company. The amended clause (c) of the explanation reads as under:

- (c) an employee as defined in clauses (a) or (b) of a subsidiary, in India or outside India, or of a holding company of the company but does not include-
  - (i) an employee who is a promoter or a person belonging to the promoter group; or
  - (ii) a director who either himself or through his relative or through any body corporate, directly or indirectly, holds more than ten percent of the outstanding equity shares of the company.

### **Preferential offer made to existing members**

Rule 13(1) of Companies (Share Capital and Debentures) Rules, 2014 reads as under:

- (1) For the purposes of clause (c) of sub-section (1) of section 62, If authorized by a special resolution passed in a general meeting, shares may be issued by any company in any manner whatsoever including by way of a preferential offer, to any persons whether or not those persons include the persons referred to in clause (a) or clause (b) of sub-section (1) of section 62 and such issue on preferential basis should also comply with conditions laid down in section 42 of the Act:

Provided that the price of shares to be issued on a preferential basis by a listed company shall not be required to be determined by the valuation report of a registered valuer.

The Ministry vide Companies (Share Capital and Debentures) (Amendment) Rules, 2015 dated 18th March, 2015 has made the provisions relating to private placement offer letter not applicable to preferential offer made to existing members. Accordingly, the Amended Rule 13(1) reads as follows:

- (1) For the purposes of clause (c) of sub-section (1) of section 62, If authorized by a special resolution passed in a general meeting, shares may be issued by any company in any manner whatsoever including by way of a preferential offer, to any persons whether or not those persons include the persons referred to in clause (a) or clause (b) of sub-section (1) of section 62 and such issue on preferential basis should also comply with conditions laid down in section 42 of the Act:

Provided that in case of any preferential offer made by a company to one or more existing members only, the provisions of sub-rule (1) and proviso to sub-rule (3) of rule 14 of Companies (Prospectus and Allotment of Securities) Rules, 2014 shall not apply:

Provided further that the price of shares to be issued on a preferential basis by a listed company shall not be required to be determined by the valuation report of a registered valuer.

## Debentures

(i) The Rule 18 of Companies (Share Capital and Debentures) Rules, 2014 reads as under:

18.(1) The company shall not issue secured debentures, unless it complies with the following conditions, namely:-

(d) the security for the debentures by way of a charge or mortgage shall be created in favour of the debenture trustee on-

- (i) any specific movable property of the company (not being in the nature of pledge); or
- (ii) any specific immovable property wherever situate, or any interest therein.

Ministry vide Companies (Share Capital and Debentures) Amendment Rules, 2015 amended Rule 18(d) which is as under:

(d) the security for the debentures by way of a charge or mortgage shall be created in favour of the debenture trustee on-

- (i) any specific movable property of the company ; or
- (ii) any specific immovable property wherever situate, or any interest therein

Provided that in case of a non-banking financial company, the charge or mortgage under sub-clause (i) may be created on any movable property.

Provided further that in case of any issue of debentures by a Government company which is fully secured by the guarantee given by the Central Government or one or more State Government or by both, the requirement for creation of charge under this sub-rule shall not apply.”

Provided also that in case of any loan taken by a subsidiary company from any bank or financial institution the charge or mortgage under this sub-rule may also be created on the properties or assets of the holding company.

(ii) Rule (5) of Companies (Share Capital and Debentures) Rules, 2014 reads as under:

For the purposes of sub-section (13) of section 71 and sub-rule (1) a trust deed in **Form No. SH-12** or as near thereto as possible shall be executed by the company issuing debentures in favour of the debenture trustees within sixty days of allotment of debentures.

Ministry vide Companies (Share Capital and Debentures) Amendment Rules, 2015 amended Rule 5 as under:

For the purposes of sub-section (13) of section 71 and sub-rule (1) a trust deed in **Form No. SH.12** or as near thereto as possible shall be executed by the company issuing debentures in favour of the debenture trustees within three months of closure of the issue or offer.

(iii) Insertion of sub-clause (9) & (10) after clause (8) as under:

(9) Nothing contained in this rule shall apply to any amount received by a company against issue of commercial paper or any other similar instrument issued in accordance with the guidelines or regulations or notification issued by the Reserve Bank of India.

(10) In case of any offer of foreign currency convertible bonds or foreign currency bonds issued in accordance with the Foreign Currency Convertible Bonds and Ordinary Shares (Through Depository Receipt Mechanism) Scheme, 1993 or regulations or directions issued by the Reserve Bank of India, the provisions of this rule shall not apply unless otherwise provided in such Scheme or regulations or directions.

### Replacement of Form SH 13

Rule 19(11) read as under:

(11) Where the nominee is a minor, the holder of the securities, making the nomination, may appoint a person in **Form No. SH.14** specified under sub-rule (1), who shall become entitled to the securities of the company, in the event of death of the nominee during his minority.

The Ministry vide Companies (Share Capital and Debentures) Amendment Rules, 2015 substituted SH.14 with SH.13.

The revised form is available at [www.mca.gov.in](http://www.mca.gov.in)

### II. Companies (Share Capital and Debentures) Second Amendment Rules, 2015

In rule 5, in sub-rule (3), for the words “issued under the seal of the company”, the words “issued under the seal, if any, of the company” have been substituted and accordingly, provisos have been inserted. The amended rule will be read as under.

3. Every share certificate shall be issued under the seal, if any, of the company which shall be affixed in the presence of, and signed by –

“(b) the secretary or any person authorised by the Board for the purpose:

Provided that in case a company does not have a common seal, the share certificate shall be signed by two directors or by a director and the Company Secretary, wherever the company has appointed a Company Secretary:

Provided further that, if the composition of the Board permits of it, at least one of the aforesaid two directors shall be a person other than a managing director or a whole-time director:

Provided also that, in case of a One Person Company, every share certificate shall be issued under the seal, if any, of the company, which shall be affixed in the presence of and signed by one director or a person authorised by the Board of Directors of the company for the purpose and the Company Secretary, or any other person authorised by the Board for the purpose, and in case the One Person Company does not have a common seal, the share certificate shall be signed by the persons in the presence of whom the seal is required to be affixed in this proviso”.

### III. Companies (Share Capital and Debentures) Third Amendment Rules, 2015

In rule 18,- In sub-rule (1), in clause (a) after sub-clause (iii) the following has been inserted as –

- (iv) Companies permitted by a Ministry or Department of the Central Government or by Reserve Bank of India or by the National Housing Bank or by any other statutory authority to issue debentures for a period exceeding ten years.”

The text of the Circulars, Orders and Amended Rules issued under this Chapter appended as under:

1

Government of India

Ministry of Corporate Affairs

Notification

New Delhi, Dated 18th March, 2015

**G.S.R.-210 (E).**- In exercise of the powers conferred under sub-clause (ii) of clause (a) of section 43, sub-clause (d) of sub-section (1) of section 54, sub-section (2) of section 55, sub-section (1) of section 56, sub-section (3) of section 56, sub-section (1) of section 62, sub-section (2) of section 42, clause (f) of sub-section (2) of section 63, sub-section (1) of section 64, clause (b) of sub-section (3) of section 67, sub-section (2) of section 68, sub-section (6) of section 68, sub-section (9) of section 68, sub-section (10) of section 68, sub-section (3) of section 71, sub-section (6) of section 71, sub-section (13) of section 71 and sub-sections (1) and (2) of section 72, read with sub-sections (1) and (2) of section 469 of the Companies Act, 2013 (18 of 2013), the Central Government hereby makes the following rules further to amend the Companies (Share Capital and Debentures) Rules, 2014, namely:-

1. (1) These rules may be called the Companies (Share Capital and Debentures) Amendment Rules, 2015.

(2) They shall come into force from the date of their publication in the Official Gazette.

2. In the Companies (Share Capital and Debenture) Rules, 2014,-

(1) for rule 3, the following rule shall be substituted, namely:-

**3. Application –** The provisions of these rules shall apply to –

(a) all unlisted public companies:

(b) all private companies: and

(c) listed companies so far as they do not contradict or conflict with any other regulation framed in this regard by the Securities and Exchange Board of India:

(2) in rule 5, in sub-rule (3), in clause (b),

(a) the first proviso shall be omitted;

(b) in the second proviso for the words “provided further that”, the words “provided that” shall be substituted;

(c) in the third proviso for the words “provided also that” the words “provided further that” shall be substituted;

(3) in rule 6, in sub-rule (2), in clause (c), for the words the words “within fifteen days”, the words “within forty-five days” shall be substituted;

(4) in rule 12, in sub-rule (1), in the Explanation, in clause (c), the words “or of an associate company” shall be omitted;

(5) in rule 13, in sub-rule (1), -

- (a) in the proviso, for the words “provided that” the words “provided further that” shall be substituted and before the proviso as so amended, the following proviso shall be inserted, namely:-

“Provided that in case of any preferential offer made by a company to one or more existing members only, the provisions of sub-rule (1) and proviso to sub-rule (3) of rule 14 of Companies (prospectus and Allotment of Securities) Rules, 2014 shall not apply.”

- (6) in rule 18,–

- (a) in sub-rule (1) –

- (A) in clause (d), for sub-clauses (i) and (ii), the following sub-clauses shall be substituted, namely :

“(i) any specific movable property of the company ; or

(ii) any specific immovable property wherever situate, or any interest therein:

Provided that in case of a non-banking financial company, the charge or mortgage under sub-clause (i) may be created on any movable property”

- (B) in clause (d), after sub-clause (ii), following proviso shall be inserted, namely:-

“Provided further that in case of any issue of debentures by a Government company which is fully secured by the guarantee given by the Central Government or one or more State Government or by both, the requirement for creation of charge under this sub-rule shall not apply.”

Provided also that in case of any loan taken by a subsidiary company from any bank or financial institution the charge or mortgage under this sub-rule may also be created on the properties or assets of the holding company;

- (b) in sub-rule (5), for the words “within sixty days of allotment of debentures”, the words “within three months of closure of the issue or offer” shall be substituted;

- (c) after sub-rule (8), following sub-rules shall be inserted, namely:-

“(9) Nothing contained in this rule shall apply to any amount received by a company against issue of commercial paper or any other similar instrument issued in accordance with the guidelines or regulations or notification issued by the Reserve Bank of India.

(10) In case of any offer of foreign currency convertible bonds or foreign currency bonds issued in accordance with the Foreign Currency Convertible Bonds and Ordinary Shares (Through Depository Receipt Mechanism) Scheme, 1993 or regulations or directions issued by the Reserve Bank of India, the provisions of this rule shall not apply unless otherwise provided in such Scheme or regulations or directions.”

- (7) in rule 19, in sub-rule (11), for the word, letters and figures “Form No. SH- 14”, the word, letters and figures “Form SH-13” shall be substituted.

- (8) in the Annexure, for “Form SH-13” and “Form SH-14” the following Forms shall respectively, be substituted, namely:-

The forms are available at [www.mca.gov.in](http://www.mca.gov.in).

[F. No. 1/4/2013-CL-V (Pt I)]

**Amardeep S. Bhatia**  
(Joint Secretary)

*Note.* - The principal rules were published in the Gazette of India, part II, section 3, sub-section (i) vide number GSR 265(E) dated 31st March, 2014 and subsequently amended vide GSR Number 413(E) dated 18th June, 2014.



**2**

**Government of India**  
**Ministry of Corporate Affairs**  
**Notification**

New Delhi Dated the 29th May, 2015

**G.S.R. \_\_\_ (E).** - In exercise of the powers conferred by sub-sections (1) and (2) of section 469 of the Companies Act, 2013 (18 of 2013), the Central Government hereby makes the following rules further to amend the Companies (Share Capital and Debentures) Rules, 2014, namely:-

1. (1) These rules may be called the Companies (Share Capital and Debentures) Second Amendment Rules, 2015.

(2) They shall come into force from the date of their publication in the Official Gazette.

2. In the Companies (Share Capital and Debentures) Rules, 2014, in rule 5, in sub-rule (3),-

(i) for the words “issued under the seal of the company”, the words “issued under the seal, if any, of the company” shall be substituted;

(ii) for clause (b), the following clause (b) shall be substituted, namely:-

“(b) the secretary or any person authorised by the Board for the purpose:

Provided that in case a company does not have a common seal, the share certificate shall be signed by two directors or by a director and the Company Secretary, wherever the company has appointed a Company Secretary:

Provided further that, if the composition of the Board permits of it, at least one of the aforesaid two directors shall be a person other than a managing director or a whole-time director:

Provided also that, in case of a One Person Company, every share certificate shall be issued under the seal, if any, of the company, which shall be affixed in the presence of and signed by one director or a person authorised by the Board of Directors of the company for the purpose and the Company Secretary, or any other person authorised by the Board for the purpose, and in case the One Person Company does not have a common seal, the share certificate shall be signed by the persons in the presence of whom the seal is required to be affixed in this proviso.”.

[File No. 1/4/2013 CL-V]

**(Amardeep Singh Bhatia)**  
*Joint Secretary to the Government of India*

**3****MINISTRY OF CORPORATE AFFAIRS****NOTIFICATION****New Delhi, the 6th November, 2015**

**G.S.R. 841(E).**—In exercise of the powers conferred by sub-sections (1) and (2) of Section 469 of the Companies Act, 2013 (18 of 2013), the Central Government hereby makes the following rules further to amend the Companies (Share Capital and Debentures) Rules, 2014, namely:—

1. (1) These rules may be called the Companies (Share Capital and Debentures) Third Amendment Rules, 2015.

(2) They shall come into force from the date of their publication in the Official Gazette.

2. In the Companies (Share Capital and Debentures) Rules, 2014,

(i) in rule 18, –

(a) In sub-rule (1), in clause (a) for sub-clause (iii) following sub-clauses shall be substituted, namely:-

“(iii) Infrastructure Debt Fund Non-Banking Financial Companies’ as defined in clause (b) of direction 3 of Infrastructure Debt Fund Non-Banking Financial Companies (Reserve Bank) Directions, 2011;

(iv) Companies permitted by a Ministry or Department of the Central Government or by Reserve Bank of India or by the National Housing Bank or by any other statutory authority to issue debentures for a period exceeding ten years.”

**[F. No. 1/4/2013 CL-V]**

**AMARDEEP SINGH BHATIA, Jt. Secy.**

Note :— The principal rules were published in the Gazette of India, Extraordinary, Part-II, Section 3, sub-section (i), vide number G.S.R. 265(E), dated the 31st March, 2014 and was last amended by notification vide number G.S.R. 439(E), dated the 29th May, 2015.

# Chapter V

## ACCEPTANCE OF DEPOSITS BY COMPANIES

**Circulars and Amendment Rules issued by the Ministry under this chapter so far:**

Sl. No.	Particulars	Impact on Lesson of ACLP
1.	General Circular No. 05/2015 dated 30th March, 2015	Lesson 6 Acceptance of Deposits by Companies
2.	Companies (Acceptance of Deposits) Amendment Rules, 2015 dated 31st March, 2015.	Lesson 6 Acceptance of Deposits by Companies
3.	General Circulars No. 09/2015 dated 18th June, 2015.	Lesson 6 Acceptance of Deposits by Companies
4.	Companies (Acceptance of Deposits) Amendment Rules, 2015 dated 15th November, 2015.	Lesson 6 Acceptance of Deposits by Companies

### **I. Amounts received by private companies from their members, directors or their relatives before 1st April, 2014**

#### **Issues Involved**

Whether the amounts received by private companies from their members, directors or their relatives prior to 1st April, 2014 will be treated as deposits?

#### **Clarification Issued**

The Ministry of Corporate Affairs vide Circular No. 05/2015 dated 30th March, 2015 in consultation with RBI clarified that amounts received by private companies prior to 1st April, 2014 shall not be treated as 'deposits' under the Companies Act, 2013 and Companies (Acceptance of Deposits) Rules, 2014 subject to the condition that relevant private company shall disclose, in the notes to its financial statement for the financial year commencing on or after 1st April, 2014 the figure of such amounts and the accounting head in which such amounts have been shown in the financial statement.

Any renewal or acceptance of fresh deposits on or after 1st April, 2014, however, be in accordance with the provisions of Companies Act, 2013 and rules made thereunder.

### **II. Deposit Insurance**

The Ministry vide Companies(Acceptance of Deposits) Amendment Rules 2014 clarified that in the Companies (Acceptance of Deposits) Rules, 2014, in rule 5, in sub-rule (1), the following proviso shall be inserted, namely:-

“Provided that the companies may accept the deposits without deposit insurance contract till the 31st March, 2015”.

**However, Companies (Acceptance of Deposits) Amendment Rules, 2015 dated 31st March, 2015 further amended the Rule 5(1) of Companies (Acceptance of Deposit) Rules, 2014 by substituting the above proviso with the following:**

*“Provided that the companies may accept deposits without deposit insurance contract till the 31st March, 2016 or till the availability of a deposit insurance product, whichever is earlier”*

*After amendment, Rule 5(1) of Companies (Acceptance of Deposits) Rules, 2014 is read as under:*

- (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.

*Explanation – 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.*

*“Provided that the companies may accept deposits without deposit insurance contract till the 31st March, 2016 or till the availability of a deposit insurance product, whichever is earlier”*

## **Definition of Deposits**

### **I. Treatment of Pending Share Application Money under the Definition of Deposits**

Companies (Acceptance of Deposits) Amendment Rules, 2015 dated 31st March, 2015 further amended the Companies (Acceptance of Deposit) Rules, 2014

The Ministry of Corporate Affairs vide Companies (Acceptance of Deposits) Amendment Rules, 2015 dated 31st March, 2015, inserted a proviso to the explanation to sub-clause (vii) of Rule 2(1) of Companies (Acceptance of Deposits) Rules, 2014 which now reads as under (insertion highlighted in bold):

(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;

*Explanation - For the purposes of this sub-clause, it is hereby clarified that –*

- (a) Without prejudice to any other liability or action, if the securities for which application money or advance for such securities was received cannot be allotted within sixty 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 fifteen days from the date of completion of sixty days, such amount shall be treated as a deposit under these rules.

The Amendment Rules has added the following proviso.

***Provided that unless otherwise required under the Companies Act, 1956 or the Securities and Exchange Board of India Act, 1992 or rules or regulations made thereunder to allot any share, stock, bond, or debenture within a specified period, if a company had received any amount by way of subscriptions to any shares, stock, bonds or debentures before the 1st April, 2014 and disclosed it in the balance sheet for the financial year, ending on or before the 31st March, 2014 against which the allotment is pending on the 31st March, 2015, the company shall, by the 1st June 2015, either return such amounts to the persons from whom these were received or allot shares, stock, bonds or debentures or comply with these rules.***

(b) any adjustment of the amount for any other purpose shall not be treated as refund.

## II. Rule 2(1)(c)(XII)(b) amended

Rule 2(1)(c)(xii)(b) read as under:

(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;

The Ministry vide Companies (Acceptance of Deposits) Amendment Rules, 2015 dated 31st March, 2015 substituted the word property with immovable property. Accordingly, the revised sub-clause is read as under:

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

The Ministry vide Companies (Acceptance of Deposits) Amendment Rules, 2015 dated 31st March, 2015 further amended the explanation to substitute "first proviso" with "proviso", the revised explanation is read as under:

*Explanation.-* For the purposes of this sub-clause the amount referred to in the proviso shall be deemed to be deposits on the expiry of fifteen days from the date they become due for refund.

## III. Copy of Credit rating to be sent alongwith Return of Deposits

The Companies (Acceptance of Deposits) Amendment Rules, 2015 dated 31st March, 2015 has added subrule 8 to Rule 3 which provides that every eligible company shall obtain, at least once in a year, credit rating for deposits accepted by it in the manner specified in the rules and a copy of the rating shall be sent to the Registrar of Companies alongwith the return of deposits in Form DPT-3. The amendment rules also issued revised Form DPT-3 (Return of deposit).

## III. Clarification on repayment of deposits accepted by the companies before the commencement of the Companies Act, 2013 under section 74 of the said Act dated 18.06.2015

### Issue Involved:

Clarification was sought regarding processing of the deposits related complaints received from investors under section 74 of the Companies Act, 2013 (the said Act) in respect of defaults made by companies in repayment of deposits accepted by them before the commencement of the said Act i.e. before 1st April, 2014 and filing of prosecutions against defaulting companies by the Registrars of Companies/Regional Directors.

### Clarification issued

The Ministry while clarifying the issue referred to Removal of Difficulties (Second) Order [S.O. 1428(E)] dated 2nd June, 2014 and Removal of Difficulties (Fourth) Order [S.O. 1460(E)] dated 6th June, 2014, wherein it has been stated that the Company Law Board has been empowered to exercise the powers of National Company Law Tribunal under sub-section (4) of section 73 and sub-section (2) of section 74 of the said Act, till the latter's constitution. Thus, a depositor is free to file an application under section 73(4) of the said Act, with the Company Law Board if the company fails to make repayment of deposits accepted by it. Further the company may also file application under section 74(2) of the said Act with the Company Law Board seeking extension of time in making the repayment of deposits accepted by it before the commencement of the provisions of the said Act.

It was also clarified that the Companies can repay deposits accepted prior to 1st April, 2014 in accordance with

terms and conditions for which the deposits had been accepted. It was also clarified that there is no bar on the Registrar of Companies for filing of prosecution against a company if such company fails to make repayment of deposits accepted by it under the provisions of the Companies Act, 1956 or Companies Act, 2013.

#### **IV. Companies (Acceptance of Deposits) Second Amendment Rules, 2015.**

**in rule 2**, in sub-rule (1), in clause (c), for sub-clause (viii), the following has been substituted read as under-

- (viii) any amount received from a person who, at the time of the receipt of the amount, was a director of the company or a relative of the director of the private company:

Provided that the director of the company or relative of the director of the private company, as the case may be, 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 and the company shall disclose the details of money so accepted in the Board's report;"

#### **in rule 3**

- (a) for the words "paid-up share capital and free reserves", wherever they occur, the words "paid-up share capital, free reserves and securities premium account" has been substituted;
- (b) in sub-rule (8), in the Table, for item (e) and entries relating thereto the following has been substituted, namely:-

"(e) Brickwork Ratings India Pvt. Ltd BWR FBBB".

the following amended rule read as under-

#### **Rule 3**

Terms and conditions of acceptance of deposits by companies –

- (1) On and from the commencement of these rules, –
- (a) no company referred to in 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:
- Provided that 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, free reserves and securities premium account of the company, and
- (b) such deposits are repayable not earlier than three months from the date of such deposits or renewal thereof.
- (2) Where depositors so desire, 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".
- (3) No company referred to in sub-section (2) of section 73 shall accept or renew any deposit from its members, 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 twenty five per cent. of the aggregate of paid up share

capital, free reserves and securities premium account of the company.

- (4) 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, free reserves and securities premium account 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 clause (a), outstanding on the date of acceptance or renewal exceeds twenty-five per cent. of aggregate of the paid up share capital, free reserves and securities premium account of the company.
- (5) 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, free reserves and securities premium account of the company.
- (6) No company referred to in sub-section (2) of section 73 or any eligible company shall invite or accept or renew any deposit 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.

*Explanation:-* For the purposes of this sub-rule, it is hereby clarified that the person who is authorised, in writing, by a company to solicit deposits on its behalf and through whom deposits are actually procured shall only 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.

- (7) 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.
- “(8) Every eligible company shall obtain, at least once in a year, credit( rating for deposits accepted by it in the manner specified herein below and a copy of the rating shall be sent to the Registrar of Companies along with the return of deposits in Form DPT-3

<b>Name of the agency</b>	<b>Minimum investment Grade Rating</b>
(a) The Credit Rating Information Services of India Ltd.	FA- (FA Minus)
(b) ICRA Ltd,	MA- (MA Minus)
(c) Credit Analysis and Research Ltd.	CARE BBB(FD)
(d) Fitch Ratings India Private Ltd	TA-(Ind) (FD)
(e) Brickwork Ratings India Pvt. Ltd	BWR FBBB
(f) SME Rating Agency of India Ltd	SMERA A]

**1****General Circular No. 05/2015****F. No. 1/8/2013-CL-V****Government of India****Ministry of Corporate Affairs**5th Floor, A Wing, Shastri Bhavan,  
Dr R.P. Road, New Delhi.Dated: 30<sup>th</sup> March, 2015

To

All Regional Directors,  
All Registrars of Companies,  
All stakeholders.

**Subject: Amounts received by private companies from their members, directors or their relatives before 1st April, 2014 - Clarification regarding applicability of Companies (Acceptance of Deposits) Rules, 2014**

Sir,

Stakeholders have sought clarifications as to whether amounts received by private companies from their members, directors or their relatives prior to 1<sup>st</sup> April, 2014 shall be considered as deposits under the Companies Act, 2013 as such amounts were not treated as 'deposits' under section 58A of the Companies Act, 1956 and rules made thereunder.

2. The matter has been examined in consultation with RBI and it is clarified that such amounts received by private companies prior to 1<sup>st</sup> April, 2014 shall not be treated as 'deposits' under the Companies Act, 2013 and Companies (Acceptance of Deposits) Rules, 2014 subject to the condition that relevant private company shall disclose, in the notes to its financial statement for the financial year commencing on or after 1st April, 2014 the figure of such amounts and the accounting head in which such amounts have been shown in the financial statement.

3. Any renewal or acceptance of fresh deposits on or after 1<sup>st</sup> April, 2014 shall, however, be in accordance with the provisions of Companies Act, 2013 and rules made thereunder.

4. This issues with the approval of the competent authority.

Yours faithfully,

**(K.M.S. Narayanan)***Assistant Director (Policy)*

Copy to :

1. e-Governance Section and web contents Officer to place this circular on the Ministry website.
2. Guard File.



## 2

### Government of India

### Ministry of Corporate Affairs

### NOTIFICATION

New Delhi, Dated the 31<sup>st</sup> March, 2015

**G.S.R. 241 (E).** - In exercise of the powers conferred by sections 73 and 76 read with sub-section (1) of section 469 of the Companies Act, 2013 (18 of 2013), the Central Government hereby makes the following rules further to amend the Companies (Acceptance of Deposits) Rules, 2014, namely:-

1. (1) These rules may be called the Companies (Acceptance of Deposits) Amendment Rules, 2015.

(2) They shall come into force from the date of their publication in the official Gazette.

2. In the Companies (Acceptance of Deposits) Rules, 2014, -

(1) in rule 2, in sub-rule (1), in clause (c), -

(a) in sub-clause (vii), in Explanation (a), the following proviso shall be inserted, namely:-

“Provided that unless otherwise required under the Companies Act, 1956 (1 of 1956) or the Securities and Exchange Board of India Act, 1992 (15 of 1992) or rules or regulations made thereunder to allot any share, stock, bond, or debenture within a specified period, if a Company receives any amount by way of subscriptions to any shares, stock, bonds or Debentures before the 1<sup>st</sup> April, 2014 and disclosed in the balance sheet for the financial year Ending on or before the 31<sup>st</sup> March, 2014 against which the allotment is pending on the 31<sup>st</sup> March, 2015, the company shall, by the 1<sup>st</sup> June 2015, either return such amounts to the persons from whom these were received or allot shares, stock, bonds or debentures or comply with these rules.”

(b) in sub-clause (xii), in item (b),

(A) for the words “consideration for property”, the words “consideration for an immovable Property” shall be substituted;

(B) for the words “against the property”, the words “against such property” shall be substituted;

(c) in sub-clause (xii), in the Explanation, for the words “referred to in the first proviso”, the words “referred to in the proviso” shall be substituted;

(2) in rule 3, after sub-rule (7), the following sub-rule shall be inserted, namely:-

“(8) Every eligible company shall obtain, at least once in a year, credit rating for deposits accepted by it in the manner specified herein below and a copy of the rating shall be sent to the Registrar of companies along with the return of deposits in Form DPT-3;

<i>Name of the agency</i>	<i>Minimum investment Grade Rating</i>
(a) The Credit Rating Information Services of India Ltd.	FA- (FA Minus)
(b) ICRA Ltd.	MA- (MA Minus)
(c) Credit Analysis and Research Ltd.	CARE BBB(FD)
(d) Fitch Ratings India Private Ltd.	tA-(ind)(FD)
(e) Brickwork Ratings India Pvt Ltd.	BWR F A
(f) SME Rating Agency of India Ltd.	SMERA A

(3) in rule 5, in sub-rule (1), for the proviso, the following proviso shall be substituted, namely:-

“Provided that the companies may accept deposits without deposit insurance contract till the 31<sup>st</sup> March, 2016 or till the availability of a deposit insurance product, whichever is earlier.”

(4) in Annexure, for Form “DPT-3” the following form shall be substituted, namely:-

The form is available at [www.mca.gov.in](http://www.mca.gov.in).

**3****General Circular No.09/2015****No. 1/8/2013-CL-V****Government of India****Ministry of Corporate Affairs**5th Floor, A Wing, Shastri Bhavan,  
Dr R.P. Road, New Delhi

Dated: 18th June, 2015

To,

All Regional Directors,

All Registrars of Companies,

All Stakeholders

**Subject : Clarification on repayment of deposits accepted by the companies before the commencement of the Companies Act, 2013 under section 74 of the said Act**

Sir,

This Ministry has received representations seeking clarification regarding processing of the deposits related complaints received from investors under section 74 of the Companies Act, 2013 (the said Act) in respect of defaults made by companies in repayment of deposits accepted by them before the commencement of the said Act i.e. before 1st April, 2014 and filing of prosecutions against defaulting companies by the Registrars of Companies/Regional Directors.

2. The matter has been examined in the Ministry and it is clarified that vide Removal of Difficulties (Second) Order [S.O. 1428(E)] dated 2nd June, 2014 and Removal of Difficulties (Fourth) Order [S.O. 1460(E)] dated 6th June, 2014, the Company Law Board has been empowered to exercise the powers of National Company Law Tribunal under sub-section (4) of section 73 and sub-section (2) of section 74 of the said Act, till the latter's constitution. Thus, a depositor is free to file an application under section 73(4) of the said Act, with the Company Law Board if the company fails to make repayment of deposits accepted by it. Further the company may also file application under section 74(2) of the said Act with the Company Law Board seeking extension of time in making the repayment of deposits accepted by it before the commencement of the provisions of the said Act .

3. Further, attention is also drawn to Explanation appearing below Rule 19 of the Companies (Acceptance of Deposits) Rules, 2014 which clarifies the conditions subject to which a company would be deemed to have complied with the requirements laid down in Section 74(l) (b) of the Companies Act, 2013. Companies can repay deposits accepted prior to 1st April, 2014 in accordance with terms and conditions for which the deposits had been accepted.

4. It is also clarified that there is no bar on the Registrar of Companies for filing of prosecution against a company

if such company fails to make repayment of deposits accepted by it under the provisions of the Companies Act, 1956 or Companies Act, 2013, subject to the contents of para 3 above.

This issues with the approval of the competent authority.

Yours faithfully

**(KMS Narayanan)**  
*Assistant Director (Policy)*

*Copy to:-*

1. e-Governance Section and web contents Officer to place this circular on the Ministry website
2. Guard File

## 4

## MINISTRY OF CORPORATE AFFAIRS

## NOTIFICATION

New Delhi, the 15th September, 2015

**G.S.R. 695(E).**—In exercise of the powers conferred by sections 73 and 76 read with sub-section (1) of section 469 of the Companies Act, 2013 (18 of 2013), the Central Government hereby makes the following rules further to amend the Companies (Acceptance of Deposits) Rules, 2014, namely:—

1. (1) These rules may be called the Companies (Acceptance of Deposits) Second Amendment Rules, 2015.

(2) They shall come into force on the date of their publication in the Official Gazette.

2. In the Companies (Acceptance of Deposits) Rules, 2014 (hereinafter referred to as said rules), in rule 2, in sub-rule (1), in clause (c), for sub-clause (viii), the following shall be substituted, namely:—

“(viii) any amount received from a person who, at the time of the receipt of the amount, was a director of the company or a relative of the director of the private company:

Provided that the director of the company or relative of the director of the private company, as the case may be, 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 and the company shall disclose the details of money so accepted in the Board’s report.”

3. In the said rules, in rule 3, –

(a) for the words “paid-up share capital and free reserves”, wherever they occur, the words “paid-up share capital, free reserves and securities premium account” shall be substituted;

(b) in sub-rule (8), in the Table, for item (e) and entries relating thereto the following shall be substituted, namely:—

“(e)	Brickwork Ratings India Pvt. Ltd.	BWR FBBB”.
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[F. No 1/8/2013-CL-V]

**AMARDEEP SINGH BHATIA, Jt. Secy.**

Note: – The principal rules were published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R. 256(E), dated the 31st March, 2014 and were subsequently modified vide number G.S.R. 386(E), dated the 6th June, 2014 and G.S.R. 241(E), dated the 31st March, 2015

# Chapter VI

## REGISTRATION OF CHARGES

<i>Sl. No.</i>	<i>Particular</i>	<i>Impact on Lesson of ACLP</i>
1.	Companies (Registration of Charges) Amendment Rules, 2015 dated 29.05.2015	Lesson 14 Charges

### **Amendment Rules issued by the Ministry under this chapter**

#### **Companies (Registration of Charges) Amendment Rules, 2015 dated 29.05.2015**

1. in rule 3, in sub-rule(4), in clause (a), for the words “under the seal of the company”, the words “under the seal, if any, of the company” has been substituted.

The Amendment rule shall be read as under-

A copy of every instrument evidencing any creation or modification of charge and required to be filed with the Registrar in pursuance of Section 77, 78 or 79 shall be verified as follows-

- (a) where the instrument or deed relates solely to the property situated outside India, the copy shall be verified by a certificate issued either under the seal, if any, of the company, or under the hand of any director or company secretary of the company or an authorised officer of the charge holder or under the hand of some person other than the company who is interested in the mortgage or charge;
- (b) where the instrument or deed relates, whether wholly or partly, to the property situated in India, the copy shall be verified by a certificate issued under the hand of any director or company secretary of the company or an authorised officer of the charge holder.

1

**[TO BE PUBLISHED IN THE GAZETTE OF INDIA, EXTRAORDINARY  
PART II, SECTION 3, SUB-SECTION (i)]**

**Government of India**

**Ministry of Corporate Affairs**

**Notification**

New Delhi Dated the 29th May, 2015

**G.S.R. (E).** - In exercise of the powers conferred by sections 77, 78 and 79 read with sub-sections (1) and (2) of section 469 of the Companies Act, 2013 (18 of 2013), the Central Government hereby makes the following rules further to amend the Companies (Registration of Charges) Rules, 2014, namely:-

1. (1) These rules may be called the Companies (Registration of Charges) Amendment Rules, 2015.

(2) They shall come into force from the date of their publication in the Official Gazette.

2. In the Companies (Registration of Charges) Rules, 2014, in rule 3, in sub-rule (4), in clause (a), for the words “under the seal of the company”, the words “under the seal, if any, of the company” shall be substituted;

**(Amardeep Singh Bhatia)**

*Joint Secretary to the Government of India*

# Chapter VII

## MANAGEMENT AND ADMINISTRATION

**Circulars and Amendment Rules issued by the Ministry under this chapter, so far:**

Sl. No.	Particulars	Impact on Lesson of ACLP
1.	General Circular 28/2014 dated 9th July, 2014.	General
2.	General Circular No. 45/2014 dated 18th November, 2014.	General
3.	General Circular No. 10 /2015 dated 13th July, 2015.	General
4.	General Circular No. 11/2015 Dated 21st July, 2015.	Lesson 12 Preparation and Presentation of Reports
5.	Companies (Management and Administration) Second Amendment Rules, 2014 dated 24th July, 2014	General
6.	Companies (Management and Administration) Amendment Rules, 2015 dated 19th March, 2015	Lesson 10 Meetings
7.	Companies (Management and Administration) Amendment Rules, 2015 dated 28th August, 2015	Lesson 10 Meetings
8.	Companies (Management and Administration) Amendment Rules, 2015 dated 16th November, 2015	Lesson 10 Meetings

### **I. Simplification of procedures and to ensure timely disposal of MGT-14 in the office of ROCs.**

In order to simplify procedures and with a view to ensure timely disposal of E-Forms in the office of Registrars of Companies and keeping in view the penal provisions for false declaration as contained in section 448 read with section 447, Ministry of Corporate Affairs clarified vide Circular No. 28/2014 dated July 09, 2014 that form no. MGT-14 will be processed and taken on record using the Straight through Process mode, in all cases except for change of Name, Change of objects, resolution for further issue of capital and conversion of companies.

### **II. Convening of Annual General Meetings in the State of Jammu & Kashmir**

Representations were received by the Ministry of Corporate Affairs from Kashmir Chamber of Commerce and Industry and others that due to the devastation caused by the floods, companies registered in the State could not convene AGMs for the financial year 2013-2014 within the stipulated time as required under the provisions of Companies Act, 2013. Considering this the Ministry advised Registrar of Companies Jammu and Kashmir vide Circular No. 45/14 dated November 18, 2014 to exercise powers conferred on him under the third proviso to section 96(1) of the Companies Act, 2013 to grant extension of time upto 31/12/2014 to those companies registered in the



State of Jammu and Kashmir who could not hold their AGMs (other than first AGM) for the financial year 2013-14 within the stipulated time.

### **III. Non-availability of E-form AOC-4, AOC-4 XBRL, AOC-4 CFS and MGT-7 and relaxation of additional fees**

The Ministry clarified that electronic version of Forms AOC-4, AOC-4 XBRL and MGT-7 are being developed and shall be made available for electronic filing latest by 30th September 2015. In addition, a separate form for filing of Consolidated Financial Statement (CFS) with the nomenclature AOC-4 CFS will be made available latest by October 2015. MGT-7 has been notified while AOC-4, AOC-4 XBRL and AOC-4 CFS will be notified shortly.

With respect to filing of financial statements, auditors report and board's report in respect of Financial Years commencing on or after 1st April, 2014, the Ministry has decided to relax the additional fee payable on Forms AOC-4, AOC-4 XBRL and Form MGT-7 upto 31/10/2015. Further, a company which is not required to file its financial statement in XBRL format and is required to file its CFS would be able to do so in the separate form for CFS i.e. AOC-4 CFS without any additional fees upto 30/11/2015.

### **IV. Sending of Financial Statements at a shorter notice**

#### **Issue Involved**

*Whether the financial statement can be sent at a shorter notice pursuant to Section 101 and 136 of Companies Act, 2013?*

The Ministry clarified that a company holding a general meeting after giving shorter notice as provided under section 101 of the Act may also circulate financial statement (to be laid/considered in the same general meeting ) at such shorter notice.

Further it is clarified that in case of a foreign subsidiary, which is not required to get its accounts audited as per legal requirement prevalent in the country of its incorporation and which does not get such accounts audited, the holding/parent Indian may place/ file such unaudited accounts to comply with requirement of Section 136(1) and 137(1) as applicable. These financials need to be translated in English, if the original accounts are not in English. Further the format of accounts of foreign subsidiaries should be as far as possible, in accordance with requirements under Companies Act, 2013. In case this is not possible, a statement indicating the reasons for deviation may be placed /filed along with such accounts.

### **V. Filing return on declaration of beneficial interest in form MGT 6**

*Rule 9(3) of companies (Management and Administration) Rules reads as under:*

“Where any declaration under section 89 is received by the company, the company shall make a note of such declaration in the register of members and shall file, within a period of thirty days from the date of receipt of declaration by it, a return in Form No.MGT.6 with the Registrar in respect of such declaration with fee.”

The Ministry vide its Companies (Management and Administration) Second Amendment Rules, 2014 dated July 24, 2014 has made the following amendments.

In rule 9, after the sub-rule (3) the following proviso shall be inserted namely-

“Provided that nothing contained in this rule shall apply in relation to a trust which is created, to set up a Mutual Fund or Venture Capital Fund or such other fund as may be approved by the Securities and Exchange Board of India”.

Accordingly the revised Rule 9(3) would read as under:

“Where any declaration under section 89 is received by the company, the company shall make a note of such declaration in the register of members and shall file, within a period of thirty days from the date of receipt of declaration by it, a return in Form No.MGT.6 with the Registrar in respect of such declaration with fee.”

“Provided that nothing contained in this rule shall apply in relation to a trust which is created, to set up a Mutual Fund or Venture Capital Fund or such other fund as may be approved by the Securities and Exchange Board of India”.

### **Signing of special notice to be given to the company**

*Rule 23(1) of Companies (Management and Administration) Rules reads as under:*

A special notice required to be given to the company shall be signed, either individually or collectively by such number of members holding not less than one percent of total voting power or holding shares on which an aggregate sum of not less than five lakh rupees has been paid up on the date of the notice.

The ministry vide Companies (Management and Administration) Second Amendment Rules 2014 dated July 24, 2014 has made the following amendments:

- iii) in rule 23, in sub-rule (1), for the words “not less than five lakh rupees”, the words “not more than five lakh rupees” shall be substituted;

Accordingly the revised Rule 23(1) is read as

A special notice required to be given to the company shall be signed, either individually or collectively by such number of members holding not less than one percent of total voting power or holding shares on which an aggregate sum of not more than five lakh rupees has been paid up on the date of the notice.

### **Conversion of data from physical mode to electronic mode by existing companies with respect to maintenance of data in electronic mode**

*Rule 27(1) of Companies (Management and Administration) Rules 2014 as under*

Every listed company or a company having not less than one thousand shareholders, debenture holders and other security holders, shall maintain its records, as required to be maintained under the Act or rules made there under, in electronic form.

*Explanation.-* For the purposes of this sub-rule, it is hereby clarified that in case of existing companies, data shall be converted from physical mode to electronic mode within six months from the date of notification of provisions of section 120 of the Act.

The ministry vide Companies (Management and Administration) Second amendment Rules 2014 dated July 24, 2014 has made the following amendments.

- “in rule 27, in sub-rule (1) and in the Explanation, for the word “shall”, the word “may” shall be substituted.”

Accordingly the revised Rule 27(1) is read as under

Every listed company or a company having not less than one thousand shareholders, debenture holders and other security holders, shall maintain its records, as required to be maintained under the Act or rules made there under, in electronic form.

*Explanation.-* For the purposes of this sub-rule, it is hereby clarified that in case of existing companies, data may

be converted from physical mode to electronic mode within six months from the date of notification of provisions of section 120 of the Act.

## **VI. Voting through Electronic Means - Rule 20 of Companies (Management and Administration) Rules, 2014 - New Rule 20 substituted**

The Ministry vide notification dated March 19, 2015 issued the Companies Management and Administration (Amendment) Rules, 2015 replacing the existing Rule 20 with New Rule 20. The provisions of this rule shall apply in respect of the general meetings for which notices are issued on or after the date of commencement of this rule.

Every company other than a company referred to in Chapter XB or Chapter XC of the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2009 having its equity shares listed on a recognised stock exchange or a company having not less than one thousand members, is required to provide to its members facility to exercise their right to vote on resolutions proposed to be considered at general meetings by electronic means. This means that all listed companies, except for Small Medium Enterprises (SME) and Institutional Trading Platform (ITP) listed companies, and companies having not less than 1000 members shall have to provide facility for electronic voting.

Electronic voting system has been defined to mean a secured system based process of display of electronic ballots, recording of votes of the members and the number of votes polled in favour or against in such a manner that the entire voting exercised by way of electronic means gets registered and counted in an electronic registry in a centralised server with adequate cyber security.

The major amendments include:

- introduction of remote voting and
- changes in provisions relating to public advertisement
- extension of electronic voting period.

## **VII. Companies (Management and Administration) Amendment Rules, 2015**

- (i) in rule 23, in sub-rule(1) for the words ‘not more than five lakh rupees’, the words ‘not less than five lakh rupees’ has been substituted, the following amended rule read as under-

A special notice required to be given to the company shall be signed either individually or collectively by such number of members holding not less than one percent of total voting power or holding shares on which an aggregate sum of “not less than five lakh rupees” has been paid on the date of the notice .

## **VIII. Companies (Management and Administration) Third Amendment Rules, 2015**

Form No. MGT-7 has been substituted by the new Form MGT-7 which is available on MCA website.

The text of the Circulars and Amendment Rules issued under this Chapter appended as under:

1

**General Circular 28/2014**  
**File No.1/9/2013-CL-V**  
**Government of India**  
**Ministry of Corporate Affairs**

5th floor, 'A' Wing, Shastri Bhawan  
Rajendra Prasad Road, New Delhi- 110001

Dated: 9<sup>th</sup> July, 2014

To

All Regional Directors,  
All Registrars of Companies,  
All Stakeholders.

**Subject : Clarification on form MGT – 14 through STP mode.**

Sir,

In order to simplify procedures and with a view to ensure timely disposal of E- Forms in the office of Registrars of Companies and keeping in view the penal provisions for false declaration as contained in section 448 read with section 447, the following E-Forms with the conditions mentioned along with will be processed and taken on record using the Straight Through Process mode.

S.NO.	E-Form	Conditions
1	MGT-14	All cases except for change of Name, change of object, resolution for further issue of capital and conversion of companies will be STP Mode.

This circular will be effective from 21.07.2014.

Yours faithfully,  
**(KMS Narayanan)**  
Assistant Director  
Tel: 23387263

Copy to :

1. PSO to Secretary
2. PPS to AS
3. PS to JS(M)/PS to JS(B)/PS to JS(SP)

**2****General Circular No. 45/2014****F.No. 02/13/2014 CL-V****Government of India****Ministry of Corporate Affairs**

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

Dated: 18.11.2014

To,

All Regional Directors,

All Registrar of Companies,

All Stakeholders.

**Subject: Extension of time for holding Annual General Meeting (AGM) under section 96(1) of the Companies Act, 2013-Companies registered in State of Jammu and Kashmir.**

Sir,

The State of Jammu and Kashmir faced unprecedented floods, particularly in the Kashmir valley in September 2014. Kashmir Chamber of Commerce and Industry and others have represented that due to the devastation caused by the floods, companies registered in the State could not convene AGMs for the financial year 2013-2014 within the stipulated time as required under the provisions of Companies Act, 2013.

2. In view of the exceptional circumstances, Registrar of Companies Jammu and Kashmir is advised to exercise powers conferred on him under the third proviso to section 96(1) of the Companies Act, 2013 to grant extension of time upto 31/12/2014 to those companies registered in the State of Jammu and Kashmir who could not hold their AGMs (other than first AGM) for the financial year 2013-14 within the stipulated time.

3. This issues with the approval of the competent authority.

Yours faithfully,

**(KMS Narayanan)***Assistant Director*

23387263

*Copy to:*

1. ROC Jammu and Kashmir
2. E-Governance Section and Web Contents Officer to place this circular on the Ministry's website.
3. Guard File.

**3****General Circular No. 10/2015****F.No. 01/34/2013 CL-V****Government of India****Ministry of Corporate Affairs**5th Floor, 'A' Wing, Shastri Bhawan,  
Dr. Rajendra Prasad Road, New Delhi-1

Dated: 13/07/2015

To,

All Regional Directors,

All Registrars of Companies,

All Stakeholders .

**Subject: Relaxation of additional fees and extension of last date of in filing of forms MGT-7 (Annual Return) and AOC-4 (Financial Statement) under the Companies Act, 2013-reg.**

Sir,

This Ministry has clarified vide General Circular 8/2014 dated 04/04/2014 that provisions of the Companies Act, 2013 relating to financial statements, auditors report and board s report shall apply in respect of financial years commencing on or after 1st April, 2014. Form AOC-4 or Form AOC-4 XBRL (Format of filing of financial statement) shall, as applicable, have to be used for filing of such statement for financial years commencing on or after 1st April, 2014. Attention is also invited to this Ministry's General Circular 22/2014 dated 25/06/2014 wherein it has been clarified that MGT-7 (Form of Annual Return) shall apply to annual returns in respect of financial years ending after 1st April, 2014.

2. The electronic versions of Forms AOC-4, AOC-4 XBRL and MGT-7 are being developed and shall be made available for electronic filing latest by 30th September 2015. In addition, a separate form for filing of Consolidated Financial Statement (CFS) with the nomenclature AOC-4 CFS will be made available latest by October 2015. MGT-7 has been notified while AOC-4, AOC-4 XBRL and AOC-4 CFS will be notified shortly.

3. In view of this, it has been decided to relax the additional fee payable on Forms AOC-4, AOC-4 XBRL and Form MGT-7 upto 31/10/2015. Further, a company which is not required to file its financial statement in XBRL format and is required to file its CFS would be able to do so in the separate form for CFS without any additional fees upto 30/11/2015.

4. This issues with the approval of the competent authority.

Yours faithfully

**(Kamna Sharma)**  
Assistant Director

Copy to:-

1. E- Governance Section

4

**General Circular No. 11/2015****No. 1/19/2013-CL-V****Government of India****Ministry of Corporate Affairs**5th Floor, A Wing, Shastri Bhavan,  
Dr R.P. Road, New Delhi

Dated 21st July 2015

To,

All Regional Directors,

All Registrars of Companies,

All Stakeholders

**Subject: Clarification with regard to circulation and filing of financial statement under relevant provisions of the Companies Act, 2013-reg.**

Sir,

Stakeholders have drawn attention to the proviso to section 101(1) of the Companies Act, 2013 (Act) which allows general meetings to be called at a shorter notice than twenty one days, and sought clarification as to whether provisions of section 136 would also allow circulation of financial statements at a shorter notice if conditions under section 101 are fulfilled.

1.2 The matter has been examined and it is clarified that a company holding a general meeting after giving a shorter notice as provided under section 101 of the Act may also circulate financial statements (to be laid/considered in the same general meeting) at such shorter notice.

2.1 Attention has also been drawn to the provisions of clause (a) of fourth proviso to section 136(1) which require every company having a subsidiary or subsidiaries to place on its website, if any, separate audited accounts in respect of each of its subsidiary. Further, fourth proviso to section 137(l) requires that a company shall attach along with its financial statements to be filed with the Registrar, the accounts of its subsidiary(ies) which have been incorporated outside India and which have not established their place of business in India. Clarification has been sought on –

- (a) Whether a company covered under above provisions can place/file unaudited accounts of a foreign subsidiary if the audit of such foreign subsidiary is not a mandatory legal requirement in the country where such foreign subsidiary has been incorporated and such audit has not been conducted, and;
- (b) Whether accounts of such foreign subsidiary would need to be as per format under Schedule III/Accounting Standards or the format as per country of incorporation of the foreign subsidiary would be sufficient.

2.2 The matter has been examined in the Ministry in consultation with 1CAI and it is clarified that in case of a foreign subsidiary, which is not required to get its accounts audited as per legal requirements prevalent in the country of its incorporation and which does not get such accounts audited, the holding/parent Indian may place/file such unaudited accounts to comply with requirements of Section 136(1) and 137(1) as applicable. These, however, would need to be translated in English, if the original accounts are not in English. Further, the format of accounts of foreign subsidiaries should be, as far as possible, in accordance with requirements under Companies Act, 2013. In case this is not possible, a statement indicating the reasons for deviation may be placed/filed along with such accounts.

This issues with the approval of the competent authority.

Yours faithfully

**(K.M.S Narayanan)**

*Assistant Director*

*Copy to:-*

1. e-Governance Section and Web Contents Officer to place this circular on the Ministry's website
2. Guard File



## 5

## MINISTRY OF CORPORATE AFFAIRS

## NOTIFICATION

New Delhi, the 24th July, 2014

**G.S.R. 537(E).**—In exercise of the powers conferred under sub-section (1) of section 88, sub-section (4) of section 88, sub-section (1) of section 89, sub-section (2) of section 89, sub-section (6) of section 89, sub-section (1) of section 91, sub-section (2) of section 92, sub-section (3) of section 92, section 93, sub-section (1) of section 94, sub-section (4) of section 100, Sections 101, 102, 105, 108, sub-section (5) of Section 109, Sections 110, 112, 113 sub-section (2) of Section 114, section 115, sub-section (1) of section 117, sub-section (1) of section 118, sub-section (2) of section 119, section 120 and sub-section (1) of section 121 and sub-section (3) of section 186, read with sub-sections (1) and (2) of section 469 of the Companies Act, 2013 (18 of 2013), the Central Government hereby makes the following rules further to amend the Companies (Management and Administration) Rules, 2014, namely:—

**1. Short title and commencement.** – (1) These rules may be called the Companies (Management and Administration) Second Amendment Rules, 2014.

(2) They shall come into force on the date of their publication in the Official Gazette.

2. In the Companies (Management and Administration) Rules, 2014,—

(i) in rule 9, after sub-rule (3), the following proviso shall be inserted namely:—

"Provided that nothing contained in this rule shall apply in relation to a trust which is created, to set up a Mutual Fund or Venture Capital Fund or such other fund as may be approved by the Securities and Exchange Board of India".

(ii) in rule 13,-

(a) the words "either value or volume of the shares" shall be omitted;

(b) the Explanation shall be omitted.

(iii) in rule 23, in sub-rule (1), for the words "not less than five lakh rupees", the words "not more than five lakh rupees" shall be substituted;

(iv) in rule 27, in sub-rule (1) and in the Explanation, for the word "shall", the word "may" shall be substituted.

[F. No. 01/34/2013-CL-V- Part-I]

**AMARDEEP S. BHATIA**

*Jt. Secy.*

*Note :-* The principal notification was published in the Gazette of India, vide No. G.S.R. 260(E), dated the

## 6

**MINISTRY OF CORPORATE AFFAIRS****NOTIFICATION**

New Delhi, the 19th March, 2015

**G.S.R. 207(E).**- In exercise of the powers conferred by section 108 read with sub-sections (1) and (2) of section 469 of the Companies Act, 2013 (18 of 2013), the Central Government hereby makes the following rules further to amend the Companies (Management and Administration) Rules, 2014, namely:-

1. (1) These rules may be called the Companies (Management and Administration) Amendment Rules, 2015.

(2) They shall come into force on the date of their publication in the Official Gazette.

2. In the Companies (Management and Administration) Rules, 2014, for rule 20 the following rule shall be substituted, namely:-

**“20. Voting through electronic means.**- (1) The provisions of this rule shall apply in respect of the general meetings for which notices are issued on or after the date of commencement of this rule.

(2) Every company other than a company referred to in Chapter XB or Chapter XC of the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2009 having its equity shares listed on a recognised stock exchange or a company having not less than one thousand members, shall provide to its members facility to exercise their right to vote on resolutions proposed to be considered at general meetings by electronic means.

**Explanation.**- For the purposes of this rule, the expression-

- (i) “agency” means the National Securities Depository Limited, the Central Depository Services (India) Limited or any other entity approved by the Ministry of Corporate Affairs subject to the condition that the National Securities Depository Limited, the Central Depository Services (India) Limited or such other entity has obtained a certificate from the standardisation Testing and Quality Certification Directorate, Department of Information Technology Ministry of Communications and Information Technology, Government of India including with regard to compliance with parameters specified under Explanation (vi);
- (ii) “cut-off date” means a date not earlier than seven days before the date of general meeting for determining the eligibility to vote by electronic means or in the general meeting;
- (iii) “cyber security” means protecting information, equipment, devices, computer, computer resource, communication device and information stored therein from unauthorised access, use, disclosures, disruption, modification or destruction;
- (iv) “electronic voting system” means a secured system based process of display of electronic ballots, recording of votes of the members and the number of votes polled in favour or against, in such a manner that the entire voting exercised by way of electronic means gets registered and counted in an electronic registry in a centralised server with adequate cyber security;

- (v) “remote e-voting” means the facility of casting votes by a member using an electronic voting system from a place other than venue of a general meeting;
- (vi) “secured system” means computer hardware, software, and procedure that
  - (a) are reasonably secure from unauthorised access and misuse;
  - (b) provide a reasonable level of reliability and correct operation;
  - (c) are reasonably suited to performing the intended functions; and
  - (d) adhere to generally accepted security procedures;
- (vii) “voting by electronic means” includes “remote e-voting” and voting at the general meeting through an electronic voting system which may be the same as used for remote e-voting .

(3) A member may exercise his right to vote through voting by electronic means on resolutions referred to in sub-rule (2) and the company shall pass such resolutions in accordance with the provisions of this rule.

(4) A company which provides the facility to its members to exercise voting by electronic means shall comply with the following procedure, namely:-

- (i) the notice of the meeting shall be sent to all the members, directors and auditors of the company either –
  - (a) by registered post or speed post ; or
  - (b) through electronic means, namely, registered e-mail ID of the recipient; or
  - (c) by courier service;
- (ii) the notice shall also be placed on the website, if any, of the company and of the agency forthwith after it is sent to the members;
- (iii) the notice of the meeting shall clearly state –
  - (A) that the company is providing facility for voting by electronic means and the business may be transacted through such voting;
  - (B) that the facility for voting, either through electronic voting system or ballot or polling paper shall also be made available at the meeting and members attending the meeting who have not already cast their vote by remote e-voting shall be able to exercise their right at the meeting;
  - (C) that the members who have cast their vote by remote e-voting prior to the meeting may also attend the meeting but shall not be entitled to cast their vote again;
- (iv) the notice shall –
  - (A) indicate the process and manner for voting by electronic means;
  - (B) indicate the time schedule including the time period during which the votes may be cast by remote e-voting;
  - (C) provide the details about the login ID;
  - (D) specify the process and manner for generating or receiving the password and for casting of vote in a secure manner.
- (v) the company shall cause a public notice by way of an advertisement to be published, immediately on completion of despatch of notices for the meeting under clause (i) of sub-rule (4) but at least twenty-one

days before the date of general meeting, at least once in a vernacular newspaper in the principal vernacular language of the district in which the registered office of the company is situated, and having a wide circulation in that district, and at least once in English language in an English newspaper having country-wide circulation, and specifying in the said advertisement, *inter alia*, the following matters namely :-

- (a) statement that the business may be transacted through voting by electronic means;
- (b) the date and time of commencement of remote e-voting;
- (c) the date and time of end of remote e-voting;
- (d) cut-off date;
- (e) the manner in which persons who have acquired shares and become members of the company after the despatch of notice may obtain the login ID and password;
- (f) the statement that –
  - (A) remote e-voting shall not be allowed beyond the said date and time;
  - (B) the manner in which the company shall provide for voting by members present at the meeting; and
  - (C) a member may participate in the general meeting even after exercising his right to vote through remote e-voting but shall not be allowed to vote again in the meeting; and
  - (D) a person whose name is recorded in the register of members or in the register of beneficial owners maintained by the depositories as on the cut-off date only shall be entitled to avail the facility of remote e-voting as well as voting in the general meeting;
- (g) website address of the company, if any, and of the agency where notice of the meeting is displayed; and
- (h) name, designation, address, email id and phone number of the person responsible to address the grievances connected with facility for voting by electronic means:

Provided that the public notice shall be placed on the website of the company, if any, and of the agency;

- (vi) the facility for remote e-voting shall remain open for not less than three days and shall close at 5.00 p.m. on the date preceding the date of the general meeting;
- (vii) during the period when facility for remote e-voting is provided, the members of the company, holding shares either in physical form or in dematerialised form, as on the cut-off date, may opt for remote e-voting:

**Provided** that once the vote on a resolution is cast by the member, he shall not be allowed to change it subsequently or cast the vote again;

**Provided further** that a member may participate in the general meeting even after exercising his right to vote through remote e-voting but shall not be allowed to vote again;

- (viii) at the end of the remote e-voting period, the facility shall forthwith be blocked:

**Provided that** if a company opts to provide the same electronic voting system as used during remote e-voting during the general meeting, the said facility shall be in operation till all the resolutions are considered and voted upon in the meeting and may be used for voting only by the members attending the meeting and who have not exercised their right to vote through remote e-voting.

- (ix) the Board of Directors shall appoint one or more scrutiner, who may be Chartered Accountant in practice, Cost Accountant in practice, or Company Secretary in practice or an Advocate, or any other person who is

not in employment of the company and is a person of repute who, in the opinion of the Board can scrutinise the voting and remote e-voting process in a fair and transparent manner:

**Provided** that the scrutiniser so appointed may take assistance of a person who is not in employment of the company and who is well-versed with the electronic voting system;

- (x) the scrutiniser shall be willing to be appointed and be available for the purpose of ascertaining the requisite majority;
- (xi) the Chairman shall, at the general meeting, at the end of discussion on the resolutions on which voting is to be held, allow voting, as provided in clauses (a) to (h) of sub-rule (1) of rule 21, as applicable, with the assistance of scrutiniser, by use of ballot or polling paper or by using an electronic voting system for all those members who are present at the general meeting but have not cast their votes by availing the remote e-voting facility.
- (xii) the scrutiniser shall, immediately after the conclusion of voting at the general meeting, first count the votes cast at the meeting, thereafter unblock the votes cast through remote e-voting in the presence of at least two witnesses not in the employment of the company and make, not later than three days of conclusion of the meeting, a consolidated scrutiniser's report of the total votes cast in favour or against, if any, to the Chairman or a person authorised by him in writing who shall countersign the same:

Provided that the Chairman or a person authorised by him in writing shall declare the result of the voting forthwith;

*Explanation.*- It is here by clarified that the manner in which members have cast their votes, that is, affirming or negating the resolution, shall remain secret and not available to the Chairman, Scrutiniser or any other person till the votes are cast in the meeting.

- (xiii) For the purpose of ensuring that members who have cast their votes through remote e-voting do not vote again at the general meeting, the scrutiniser shall have access, after the closure of period for remote e-voting and before the start of general meeting, to details relating to members, such as their names, folios, number of shares held and such other information that the scrutiniser may require, who have cast votes through remote e-voting but not the manner in which they have cast their votes:
- (xiv) the scrutiniser shall maintain a register either manually or electronically to record the assent or dissent received, mentioning the particulars of name, address, folio number or client ID of the members, number of shares held by them, nominal value of such shares and whether the shares have differential voting rights;
- (xv) the register and all other papers relating to voting by electronic means shall remain in the safe custody of the scrutiniser until the Chairman considers, approves and signs the minutes and thereafter, the scrutiniser shall hand over the register and other related papers to the company;
- (xvi) the results declared along with the report of the scrutiniser shall be placed on the website of the company, if any, and on the website of the agency immediately after the result is declared by the Chairman :

Provided that in case of companies whose equity shares are listed on a recognised stock exchange, the company shall, simultaneously, forward the results to the concerned stock exchange or exchanges where its equity shares are listed and such stock exchange or exchanges shall place the results on its or their website.

- (xvii) subject to receipt of requisite number of votes, the resolution shall be deemed to be passed on the date of the relevant general meeting.

*Explanation.*- For the purposes of this clause, the requisite number of votes shall be the votes required to pass the resolution as the 'ordinary resolution' or the 'special resolution', as the case may be, under section 114 of the Act.

(xviii) a resolution proposed to be considered through voting by electronic means shall not be withdrawn.”

[F. No. 01/34/2013-CL-V- Part-I]

**AMARDEEP S. BHATIA**

*Joint Secretary*

*Note.*- The principal rules were published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), *vide* number G.S.R.260(E), dated the 31<sup>st</sup> March,2014 and subsequently amended *vide* number G.S.R.415(E), dated the 23<sup>rd</sup> June,2014 and *vide* number G.S.R 537(E), dated the 24<sup>th</sup> July, 2014.

**7****MINISTRY OF CORPORATE AFFAIRS****NOTIFICATION****New Delhi, the 28th August, 2015**

G.S.R. 669(E).- In exercise of the powers conferred under sub-section (1) of section 88, sub-section (4) of section 88, sub-section (1) of section 89, sub-section (2) of section 89, sub-section (6) of section 89, sub-section (1) of section 91, sub-section (2) of section 92, sub-section (3) of section 92, section 93, sub-section (1) of section 94, sub-section (4) of section 100, sections 101, 102, 105, 108, sub-section (5) of section 109, Sections 110, 112, 113, sub-section (2) of section 114, section 115, sub-section (1) of section 117, sub-section (1) of section 118, sub-section (2) of section 119, section 120 and sub-section (1) of section 121 and sub-section (3) of section 186, read with sub-sections (1) and (2) of section 469 of the Companies Act, 2013 (18 of 2013), the Central Government hereby makes the following rules further to amend the Companies (Management and Administration) Rules, 2014, namely:-

**Short title and commencement.**

1. (1) These rules may be called the Companies (Management and Administration) Amendment Rules, 2015.  
(2), They shall come into force on the date of their publication in the Official Gazette.
2. In the Companies (Management and Administration) Rules, 2014, –
  - (i) in rule 23, in sub-rule (1) for the words ‘not more than five lakh rupees’, the words ‘not less than five lakh rupees’ shall be substituted.
  - (ii) For Form No. MGT-7, the following form shall be substituted.

The form is available on MCA website

**[F. No. 01/34/2013-CLV- Part-I]****AMARDEEP S. BHATIA, Jt. Secy.**

**NOTE:-** The principal notification was published in the gazette of India, *vide* No. G.S.R. 260(E), dated the 31<sup>st</sup> March, 2014, subsequently amended, *vide* No. G.S.R.415(E) ,dated the 23<sup>rd</sup> June , 2014 and lastly amended *vide* No. G.S.R. 537(E) dated 24.07.2014.

8

**MINISTRY OF CORPORATE AFFAIRS****NOTIFICATION****New Delhi, the 16th November, 2015**

G.S.R. 862(E).— In exercise of the powers conferred under sub-sections (2) and (3) of section 92 read with subsections (1) and (2) of section 469 of the Companies Act, 2013 (18 of 2013), the Central Government hereby makes the following rules further to amend the Companies (Management and Administration) Rules, 2014, namely:—

**Short title and commencement.**

1. (1) These rules may be called the Companies (Management and Administration) Third Amendment Rules, 2015.

(2) They shall come into force on the date of their publication in the Official Gazette.

2. In the Companies (Management and Administration) Rules, 2014, for Form No. MGT-7, the following form shall be substituted.

Form is available on MCA website.

**[F. No. 01/34/2013-CL-V- Part-I]**

**AMARDEEP S. BHATIA, Jt. Secy.**

Note:—The principal notification was published in the Gazette of India, Extraordinary Part II, section 3, sub-section (i) vide No. G.S.R. 260(E), dated the 31st March, 2014 and subsequently amended vide the following notifications:-

Sl. No.	Notification Number	Notification Date
1	G.S.R. 415 (E)	23-06-2014
2	G.S.R. 537 (E)	24-07-2014
3	G.S.R. 669 (E)	28-08-2015
4	G.S.R. 737 (E)	24-09-2015



# Chapter VIII

## DECLARATION AND PAYMENT OF DIVIDEND

**Amendment in Rules by the Ministry under this Chapter, so far :**

Sl. No.	Particular	Impact on Lesson of ACLP
1.	Companies (Declaration and Payment of Dividend) Second Amendment Rules, 2015 dated 29 <sup>th</sup> May, 2015	Lesson 13 Distribution of Profits
2.	Investor Education and Protection Fund Authority (Appointment of Chairperson and Members, Holding of Meetings and Provision for Offices and Officers) Rules, 2016 dated 13th January, 2016.	Lesson 13 Distribution of Profits
3.	MCA Notification No. S.O. 125(E) dated 13th January, 2016	Lesson 13 Distribution of Profits

**Brief topics covered in Amendment Rules are discussed as under :**

**I. Rule 3(5) of Companies (Declaration and Payment of Dividend) Rules, 2014 stand omitted**

*The Rule 3(5) Companies (Declaration and Payment of Dividend) Rules, 2014 as notified was read as under:*

No company shall declare dividend unless carried over previous losses and depreciation not provided in previous year are set off against profit of the company of the current year the loss or depreciation, whichever is less, in previous years is set off against the profit of the company for the year for which dividend is declared or paid.

*The Ministry vide Companies (Declaration and Payment of Dividend) Amendment Rules 2014 dated 12th June 2014 has made following amendments.*

In companies (Declaration and Payment of Dividend) Rules 2014, in rule 3, for sub-rule 5, the following shall be substituted.

5. No company shall declare dividend unless carried over previous losses and depreciation not provided in previous year or years are set off against profit of the company of the current year.

**Vide Companies (Declaration and Payment of Dividend) Second Amendment Rules, 2015 Rule 3(5) has been omitted.**

## II. Investor Education and Protection Fund Authority (Appointment of Chairperson and Members, Holding of Meetings and Provision for Offices and Officers) Rules, 2016 as notified by MCA.

**Definitions.**- (l) In these rules, unless the context otherwise requires,-

- (a) "Act" means the Companies Act 2013;
- (b) "Authority" means the Investor Education and Protection Fund Authority constituted under sub-section (5) of section 125 of the Act;
- (c) "Chairperson" means the chairperson of the authority appointed under rule (5) of these rules; (d) "Company" means company as defined in sub-section (20) of section 2 of the Act and includes 'corresponding new bank' as defined in sub-section (d) of section 2 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 (5 of 1970) and clause (b) of section 2 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1980 (40 of 1980);
- (e) "Fund" means the Investor Education and Protection Fund (IEPF) established under section 125 of the Act;
- (f) "Investor" means any person who has committed money in shares, or debentures, bond or deposits under a scheme or plan of a company registered under the Act;
- (g) "Member" means members of the Authority appointed under sub-section (6) of section 125 of the Act; and
- (h) "Section" means the section of the Act.

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

**Establishment of the Authority.**- The Authority shall be established on such date as may be notified by the Central Government.

**Composition of the Authority.**- (l) The Authority shall consist of the following, namely! (a) Chairperson (b) six members (c) Chief Executive Officer (2) The Chief Executive officer shall be the convenor of the Authority.

**Chairperson of the Authority.**- The Secretary, Ministry of corporate Affairs shall be the *ex-officio* Chairperson of the Authority.

**Chief Executive Officer of the Authority.**- The Central Government person to be the Chief Executive Officer of the Authority.

**Members of the Authority.**- The Central Government may appoint the following as the members of the Authority, namely:-

- (i) a person not below the rank of Executive Director to be nominated by the Reserve Bank of India as *ex-officio* member;
- (ii) a person not below, the rank of Executive Director to be nominated by the Securities and Exchange Board of India as *ex-officio* member;
- (iii) four persons having special knowledge and experience of not less than fifteen years, in finance, management, accountancy or law with one person from each discipline and such person shall have special knowledge, or professional experience, which shall in the opinion of the Central Government shall be useful to the Authority

**The term of office of members of the Authority.**- (l) The members of the Authority appointed under clause (iii)

of rule 7 shall hold office for a period of three years and shall be eligible for reappointment;

Provided that no member shall hold office for more than three terms.

Provided further that a member shall be eligible for reappointment after expiration of cooling off period of three years also his term.

(2) Notwithstanding anything contained in sub-rule (1), the Central Government shall have the right to terminate the services of a member appointed under clause (iii) of rule 7, at any time before the expiry of the period specified under sub-rule (1), by giving him notice of not less than three months in writing for reasons mentioned in sub-rule (4), and a member shall also have the right to relinquish his office, at any time before the expiry of the period specified under sub-rule (1), by giving to the Central Government notice of not less than three months in writing.

(3) The members appointed under clause (iii) of rule 7 shall hold office for a period of three years or till attaining the age of 65 years whichever is earlier.

(4) The Central Government shall remove a member From office if he –

- (a) is, or at any time has been, adjudicated as insolvent:
- (b) is of unsound mind and stands so declared by a competent court:
- (c) has been convicted of an offence which, in the opinion of the Central Government, involves a moral turpitude;
- (d) has, in the opinion of the Central Government, so abused his position as to render his continuation in office detrimental to the public interest.

Provided that no member shall be removed under this sub-rule unless he has been given a reasonable opportunity of being heard in the matter.

**The number of officers and employees of the Authority.**-The Authority shall have such number of officers and other employees for rendering secretarial assistance and for its day to day functions as are set out in Schedule 1 to these rules.

**Functions of the Authority.**- (1) Subject to the provision of the Act, the Authority shall have the duty to administer the Fund for Investor Education and Protection.

(2) The general management of the affairs of the Authority shall vest in the Chief Executive Officer, who may exercise powers, which may be authorised by the Authority.

(3) The Chief Executive Officer shall function under superintendence and direction of the Chairperson.

(4) Without prejudice to the generality of 'the provisions, the functions o the Authority shall include the following, namely:-

- (a) The Authority may constitute permanent Committees for Overseeing its functions:
- (b) Each Committee shall comprise two members. Chief Executive Officer and concerned functional head, who shall be the secretary of the Committee. The Committee shall be headed by an ex-officio member:
- (c) The Committee may invite experts with special knowledge and expertise. as and when required to assist it on any specific issue:
- (d) The Authority may outsource, if required, work related to Funds and Shares Management.
- (e) The broad functional divisions of the Authority shall be as per Schedule II to these rules.

**Meetings.**- (1) The Authority and its Committees shall meet at such tinges and places as it may consider necessary.

(2) The Authority and its Committees shall determine its own procedure for holding of meetings.

(3) If the Authority or its Committees has to hold a meeting elsewhere than in New Delhi, the approval of the Chairperson of the Authority shall be obtained indicating the reasons thereof.

(4) The Authority and the Committees shall meet at least once in a quarter and at least four such meetings shall be held in a financial year:

Provided that not more than one hundred and twenty days shall intervene between two consecutive meetings.

(5) The meeting of the Authority shall be presided over by the Chairperson.

(6) If for any reason, the Chairperson is unable to attend a meeting, any other Member chosen by the Members present from amongst themselves at the meeting shall preside over the meeting.

(7) In case of difference in opinion on any question before the Authority, or any of its Committees, the views of the majority shall be taken as the final decision.

(8) More than fifty percent appointed Members of the Authority shall constitute the quorum for the transaction of business at a meeting of the Authority.

(9) Two members of a Committee shall constitute the quorum for the transaction of business at a meeting of the Committee.

(10) For journeys performed by a non-official member of the Authority or Committee or a special invitee in connection with the work of the Authority or Committee, the actual expenditure for attending the meeting shall be reimbursed, subject to maximum of such expenditure limit applicable to a Senior Administrative Grade officer of Government of India.

**Member not to participate in meetings in certain cases.** - A member, who has any pecuniary interest, direct or indirect in any matter that is brought up for consideration at a meeting of the Authority and its Committees, shall, as soon as possible after relevant circumstances have come to his knowledge, disclose the nature of his interest at such meeting and such disclosure shall be recorded in the proceedings of the Authority and its Committees, and the member shall not take any part in any deliberation or decision of the Authority and its Committees with respect to that matter.

**Vacancies, etc., not to invalidate proceedings of Authority.** - No act or proceeding of the Authority and its Committees shall be invalid merely by reason of-

- (a) any vacancy in, or any defect in the constitution of the Authority and its Committees;
- (b) any defect in the appointment of a person acting as a member of the Authority and its Committees;
- (c) any lapses in the procedure of the Authority and its Committees not affecting the merits of the case.

**Protection of action taken in good faith.** - No suit, prosecution or other legal proceedings shall lie against the Central Government or Authority or any officer of the Central Government or any member, officer or other employee of the Authority for anything, which is in good faith done or intended to be done under these rules.

#### Schedule I

<b>S. No.</b>	<b>Designation</b>	<b>Pay Scale</b>	<b>Number of posts</b>
1.	General Manager	PB-4 + GP 8700	01
2.	Assistant General Manager	PB-3 + GP 5400	01

3.	Senior Accounts Officer	PB-3 + GP 5400	01
4.	Assistant Account Officer	PB-2 + GP 4800	02

### Schedule II

#### Functional Divisions of the Authority

**(1) Administration:**

- (i) Establishing, equipping, maintaining and operating administrative functions as may be necessary or deemed expedient for fulfilling the objects of the Fund.
- (ii) Authority and committees of Authority, related matters.

**(2) Investment/ funds Management:**

- (i) Maintaining funds standing to the credit of fund, investing the same in interest bearing account of any nationalised bank.
- (ii) Opening of depository account of authority and transferring into the account securities of investor and transferring to investors account securities upon settlement of the claim.

**(3) Claims and Settlement:**

- (i) Making refunds to eligible investors after following due procedure in respect of claims lodged by investors in accordance with clause (a) of sub-section (3) of section 125 of the Act and rules made thereunder.
- (ii) Distribution of disgorged amount as per the order of the court or the Authority.
- (iii) Distribution of disgorged amount in consultation with Legal and Enforcement Division, to eligible and identified security holders who have suffered losses due to any wrong actions of any person in accordance with the order of Tribunal or order of the Authority, as the case may be. The amount to be distributed shall be limited to amount disgorged in respect of any particular order and no other funds can be used for distribution.

**(4) Legal and Enforcement:**

- (i) Initiation of legal cases against non-compliant companies or persons.
- (ii) Handling disputes and legal cases arising out of claims or settlement of any other dispute.
- (iii) Reimbursement of funds from Fund for meeting legal expenses incurred in pursuing class action suits under section 37 and 245 of the Act by members, debenture holders or depositors as sanctioned by Tribunal in accordance with the procedure prescribed in this regard.

**(5) Investor Education and Protection:**

- (i) Registering associations or institutions or professional bodies or chambers of commerce and industry or other organisations engaged in investor education and protection activities.
- (ii) Sanctioning grants to the registered entities for seminars, programmes projects or activities in the field of corporate 'governance. Investors' Education and Protection including research activities.
- (iii) Monitoring of the utilisation of the grants to ensure the achievements of the objectives of the sanctioning of the grants.
- (iv) Cooperating and collaborating with institutions engaged in Investor education corporate governance, awareness, and protection activities.

- (v) Conducting on its own or in collaboration with entities engaged in Investor education and protection or academic institutions or other regulated entities like Stock Exchanges, Depositories, Banks and Mutual funds nationwide investors' education and awareness programmes including seminars and symposia.
- (vi) Setting up of institutional arrangements or infrastructure for taking up programmes: projects and action plans keeping in view the objectives and expenditure relating thereto, including research and training activities.
- (vii) Publishing and disseminating information tier investors' benefit and objects and achievements of the Fund.
- (viii) Advising Central Government on the issues related to Investors' interest.
- (ix) Sponsor specific studies or research or analysis for the development of capital market.

**(6) Finance, Accounts and Audit:**

- (i) Maintenance of accounts of inflow and outflows of funds.
- (ii) Reconciliation of accounts of investors.
- (iii) Preparation of all accounting reports. audit work and annual report.
- (iv) Returns to Central Government.
- (v) Preparation of budget of authority and its monitoring.
- (vi) Accounting for all claims of investor in respective accounts.
- (vii) Procedure For accounting of investors' funds and securities.

**(7) the Chairperson may re-allocate functions, merit or sub-divide divisions as per administrative requirement.**

**III. MCA Notification NO. S.O.125 (E) dated 13<sup>th</sup> January, 2016**

In exercise of the powers conferred by sub-section (3) of Section 1 of the Companies Act, 2013 (18 of 2013), the Central Government hereby appoints the 13th day of January, 2016 as the date on which the provisions of sub-section (5), sub-section (6) [except with respect to the manner of administration of the Investor Education and Protection Fund] and sub-section (7) of section 125 of the said Act shall come into force.

The text of the Amendment Rules issued under this Chapter appended as under :

1

**Government of India**

**Ministry of Corporate Affairs**

**Notification**

New Delhi, the 29th May, 2015

**G.S.R. 441(E).** - In exercise of the powers conferred under sub-section (1) of section 123 read with section 469 of the Companies Act, 2013 (18 of 2013), the Central Government hereby makes the following rules further to amend the Companies (Declaration and Payment of Dividend) Rules, 2014, namely:-

1. (1) These rules may be called the Companies (Declaration and Payment of Dividend) Second Amendment Rules, 2015.

(2) They shall come into force on the date of their publication in the Official Gazette.

2. In the Companies (Declaration and Payment of Dividend) Rules, 2014, in rule 3, sub-rule (5) shall be omitted.

[F. No. 1/31/2013-CL-V-Part]

**Amardeep Singh Bhatia**

*Joint Secretary to the Government of India*

## 2

**MINISTRY OF CORPORATE AFFAIRS****NOTIFICATION****New Delhi, the 13th January, 2016**

**G.S.R. 26(E).**— In exercise of the powers conferred by sub-sections (5), (6) and (7) of section 125 read with section 469 of the Companies Act, 2013 (18 of 2013), the Central Government hereby makes the following rules, namely:-

**1. Short title, extent and commencement.**

(1) These rules may be called the Investor Education and Protection Fund Authority (Appointment of Chairperson and Members, holding of meetings and provision for offices and officers) Rules, 2016.

(2) They shall come into force on the date of their publication in the Official Gazette.

**2. Definitions.**

(1) In these rules, unless the context otherwise requires, –

- (a) “Act” means the Companies Act, 2013;
- (b) “Authority” means the Investor Education and Protection Fund Authority constituted under sub-section (5) of section 125 of the Act;
- (c) “Chairperson” means the chairperson of the authority appointed under rule (5) of these rules;
- (d) “Company” means company as defined in sub-section (20) of section 2 of the Act and includes ‘corresponding new bank’ as defined in sub-section (d) of section 2 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 (5 of 1970) and clause (b) of section 2 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1980 (40 of 1980);
- (e) “Fund” means the Investor Education and Protection Fund (IEPF) established under section 125 of the Act;
- (f) “Investor” means any person, who has committed money in shares, or debentures, bond or deposits under a scheme or plan of a company registered under the Act;
- (g) “Member” means members of the Authority appointed under sub-section (6) of section 125 of the Act; and
- (h) “Section” means the section of the Act.

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

**3. Establishment of the Authority.** – The Authority shall be established on such date as may be notified by the Central Government.

**4. Composition of the Authority.** – (1) The Authority shall consist of the following, namely:-



- (a) Chairperson
- (b) six members
- (c) Chief Executive Officer

(2) The Chief Executive Officer shall be the convenor of the Authority.

**5. Chairperson of the Authority.** – The Secretary, Ministry of Corporate Affairs shall be the ex-officio Chairperson of the Authority.

**6. Chief Executive Officer of the Authority.** – The Central Government shall appoint a person to be the Chief Executive Officer of the Authority.

**7. Members of the Authority.** – The Central Government may appoint the following as the members of the Authority, namely:—

- (i) a person not below the rank of Executive Director to be nominated by the Reserve Bank of India as ex-officio member;
- (ii) a person not below the rank of Executive Director to be nominated by the Securities and Exchange Board of India as ex-officio member;
- (iii) four persons having special knowledge and experience of not less than fifteen years, in finance, management, accountancy or law with one person from each discipline and such person shall have special knowledge, or professional experience, which shall in the opinion of the Central Government shall be useful to the Authority.

**8. The term of office of members of the Authority.** – (1) The members of the Authority appointed under clause (iii) of rule 7 shall hold office for a period of three years and shall be eligible for reappointment:

Provided that no member shall hold office for more than three terms.

Provided further that a member shall be eligible for reappointment after expiration of cooling off period of three years after his term.

(2) Notwithstanding anything contained in sub-rule (1), the Central Government shall have the right to terminate the services of a member appointed under clause (iii) of rule 7, at any time before the expiry of the period specified under sub-rule (1), by giving him notice of not less than three months in writing for reasons mentioned in sub-rule (4), and a member shall also have the right to relinquish his office, at any time before the expiry of the period specified under sub-rule (1), by giving to the Central Government notice of not less than three months in writing.

(3) The members appointed under clause (iii) of rule 7 shall hold office for a period of three years or till attaining the age of 65 years whichever is earlier.

(4) The Central Government shall remove a member from office if he—

- (a) is, or at any time has been, adjudicated as insolvent;
- (b) is of unsound mind and stands so declared by a competent court;
- (c) has been convicted of an offence which, in the opinion of the Central Government, involves a moral turpitude;
- (d) has, in the opinion of the Central Government, so abused his position as to render his continuation in office detrimental to the public interest.

Provided that no member shall be removed under this sub-rule unless he has been given a reasonable opportunity of being heard in the matter.

**9. The number of officers and employees of the Authority.** – The Authority shall have such number of officers

and other employees for rendering secretarial assistance and for its day to day functions as are set out in Schedule I to these rules.

**10. Functions of the Authority.** – (1) Subject to the provision of the Act, the Authority shall have the duty to administer the Fund for Investor Education and Protection.

(2) The general management of the affairs of the Authority shall vest in the Chief Executive Officer, who may exercise powers, which may be authorised by the Authority.

(3) The Chief Executive Officer shall function under superintendence and direction of the Chairperson.

(4) Without prejudice to the generality of the provisions, the functions of the Authority shall include the following, namely:-

- (a) The Authority may constitute permanent Committees for overseeing its functions;
- (b) Each Committee shall comprise two members, Chief Executive Officer and concerned functional head, who shall be the secretary of the Committee. The Committee shall be headed by an ex-officio member;
- (c) The Committee may invite experts with special knowledge and expertise, as and when required to assist it on any specific issue;
- (d) The Authority may outsource, if required, work related to Funds and Shares Management.
- (e) The broad functional divisions of the Authority shall be as per Schedule II to these rules.

**11. Meetings.** – (1) The Authority and its Committees shall meet at such times and places as it may consider necessary.

(2) The Authority and its Committees shall determine its own procedure for holding of meetings.

(3) If the Authority or its Committees has to hold a meeting elsewhere than in New Delhi, the approval of the Chairperson of the Authority shall be obtained indicating the reasons thereof.

(4) The Authority and the Committees shall meet at least once in a quarter and at least four such meetings shall be held in a financial year: Provided that not more than one hundred and twenty days shall intervene between two consecutive meetings.

(5) The meeting of the Authority shall be presided over by the Chairperson.

(6) If for any reason, the Chairperson is unable to attend a meeting, any other Member chosen by the Members present from amongst themselves at the meeting shall preside over the meeting.

(7) In case of difference in opinion on any question before the Authority, or any of its Committees, the views of the majority shall be taken as the final decision.

(8) More than fifty percent appointed Members of the Authority shall constitute the quorum for the transaction of business at a meeting of the Authority.

(9) Two members of a Committee shall constitute the quorum for the transaction of business at a meeting of the Committee.

(10) For journeys performed by a non-official member of the Authority or Committee or a special invitee in connection with the work of the Authority or Committee, the actual expenditure for attending the meeting shall be reimbursed, subject to maximum of such expenditure limit applicable to a Senior Administrative Grade officer of Government of India.

**12. Member not to participate in meetings in certain cases.**

A member, who has any pecuniary interest, direct or indirect in any matter that is brought up for consideration at a meeting of the Authority and its Committees, shall, as soon as possible after relevant circumstances have come to his knowledge, disclose the nature of his interest at such meeting and such disclosure shall be recorded in the proceedings of the Authority and its Committees, and the member shall not take any part in any deliberation or decision of the Authority and its Committees with respect to that matter.

**13. Vacancies, etc., not to invalidate proceedings of Authority.** – No act or proceeding of the Authority and its Committees shall be invalid merely by reason of-

- (a) any vacancy in, or any defect in the constitution of the Authority and its Committees;
- (b) any defect in the appointment of a person acting as a member of the Authority and its Committees;
- (c) any laches in the procedure of the Authority and its Committees not affecting the merits of the case.

**14. Protection of action taken in good faith.** – No suit, prosecution or other legal proceedings shall lie against the Central Government or Authority or any officer of the Central Government or any member, officer or other employee of the Authority for anything, which is in good faith done or intended to be done under these rules

#### Schedule I

<b>S. No.</b>	<b>Designation</b>	<b>Pay Scale</b>	<b>Number of posts</b>
1.	General Manager	PB-4 + GP 8700	01
2.	Assistant General Manager	PB-3 + GP 5400	01
3.	Senior Accounts Officer	PB-3 + GP 5400	01
4.	Assistant Account Officer	PB-2 + GP 4800	02

#### Schedule II

#### Functional Divisions of the Authority

**(1) Administration:**

- (i) Establishing, equipping, maintaining and operating administrative functions as may be necessary or deemed expedient for fulfilling the objects of the Fund.
- (ii) Authority and committees of Authority related matters.

**(2) Investment/ Funds Management:**

- (i) Maintaining funds standing to the credit of Fund, investing the same in interest bearing account of any nationalised bank.
- (ii) Opening of depository account of authority and transferring into the account securities of investor and transferring to investors account securities upon settlement of the claim.

**(3) Claims and Settlement:**

- (i) Making refunds to eligible investors after following due procedure in respect of claims lodged by investors in accordance with clause (a) of sub-section (3) of section 125 of the Act and rules made thereunder.
- (ii) Distribution of disgorged amount as per the order of the court or the Authority.
- (iii) Distribution of disgorged amount in consultation with Legal and Enforcement Division, to eligible and identified

security holders who have suffered losses due to any wrong actions of any person in accordance with the order of Tribunal or order of the Authority, as the case may be. The amount to be distributed shall be limited to amount disgorged in respect of any particular order and no other funds can be used for distribution.

**(4) Legal and Enforcement:**

- (i) Initiation of legal cases against non-compliant companies or persons.
- (ii) Handling disputes and legal cases arising out of claims or settlement or any other dispute.
- (iii) Reimbursement of funds from Fund for meeting legal expenses incurred in pursuing class action suits under section 37 and 245 of the Act by members, debenture holders or depositors as sanctioned by Tribunal in accordance with the procedure prescribed in this regard.

**(5) Investor Education and Protection:**

- (i) Registering associations or institutions or professional bodies or chambers of commerce and industry or other organisations engaged in investor education and protection activities.
- (ii) Sanctioning grants to the registered entities for seminars, programmes, projects or activities in the field of corporate governance, Investors' Education and Protection including research activities.
- (iii) Monitoring of the utilisation of the grants to ensure the achievements of the objectives of the sanctioning of the grants.
- (iv) Cooperating and collaborating with institutions engaged in Investor Education, corporate governance, awareness, and protection activities.
- (v) Conducting on its own or in collaboration with entities engaged in Investor education and protection or academic institutions or other regulated entities like Stock Exchanges, Depositories, Banks and Mutual funds nationwide investors' education and awareness programmes including seminars and symposia.
- (vi) Setting up of institutional arrangements or infrastructure for taking up programmes; projects and action plans keeping in view the objectives and expenditure relating thereto, including research and training activities.
- (vii) Publishing and disseminating information for investors' benefit and objects and achievements of the Fund.
- (viii) Advising Central Government on the issues related to Investors' interest.
- (ix) Sponsor specific studies or research or analysis for the development of capital market.

**(6) Finance, Accounts and Audit:**

- (i) Maintenance of accounts of inflow and outflow of funds.
- (ii) Reconciliation of accounts of investors.
- (iii) Preparation of all accounting reports, audit work and annual report.
- (iv) Returns to Central Government.
- (v) Preparation of budget of authority and its monitoring.
- (vi) Accounting for all claims of investor in respective accounts.
- (vii) Procedure for accounting of investors' funds and securities.

(7) The Chairperson may re-allocate functions, merge or sub-divide divisions as per administrative requirement.

[F. No. 05/27/2013-IEPF]

**MANOJ KUMAR, Jt. Secy.**

**3**

**MINISTRY OF CORPORATE AFFAIRS**

**NOTIFICATION**

**New Delhi, the 13th January, 2016**

**S.O. 125(E).**—In exercise of the powers conferred by sub-section (3) of Section 1 of the Companies Act, 2013 (18 of 2013), the Central Government hereby appoints the 13th day of January, 2016 as the date on which the provisions of sub-section (5), sub-section (6) [except with respect to the manner of administration of the Investor Education and Protection Fund] and sub-section (7) of section 125 of the said Act shall come into force.

**[F. No. 5/27/2013-IEPF (Part)]**

**AMARDEEP SINGH BHATIA, Jt. Secy.**

# Chapter IX

## ACCOUNTS OF COMPANIES

**Circulars, notifications and amendment rules issued by the Ministry under this chapter so far:**

Sl. No.	<i>Particulars</i>	<i>Impact on Lesson of ACLP</i>
1.	General Circular No. 36/2014 dated 17th September, 2014 Presentation of Reports	Lesson 12 Preparation and Presentation of Reports
2.	General Circular No. 39/2014 dated 14th October, 2014	–
3.	General Circular No. 01/2015 dated 3rd February, 2015	–
4.	The Companies (CSR policy) Amendment Rules, 2014 dated 12th September, 2014	Lesson 12 Preparation and Presentation of Reports
5.	The Companies (Accounts) Amendment Rules, 2014 dated 14th October, 2014	Lesson 12 Preparation and Presentation of Reports
6.	The Companies (Accounts) Amendment Rules, 2015 dated 16th January, 2015	Lesson 12 Preparation and Presentation of Reports
7.	The Companies (CSR policy) Amendment Rules, 2015 dated 19th January, 2015	Lesson 12 Preparation and Presentation of Reports
8.	The Companies (Indian Accounting Standards) Rules, 2015. Notification dated 16 <sup>th</sup> February, 2015	Lesson 12 Preparation and Presentation of Reports
9.	General Circular No. 11/2015 dated 21st July, 2015	General
10.	MCA Notification No. S.O. 2437(E) dated 4th September, 2015	Lesson 12 Preparation and Presentation of Reports
11.	MCA Notification No. GSR 679(E) dated 4th September, 2015	Lesson 12 Preparation and Presentation of Reports
12.	The Companies (Accounts) Second Amendment Rules, 2014 dated 4th September, 2015	Lesson 12 Preparation and Presentation of Reports
13.	The Companies (Filing of Documents and Forms in Extension Business Reporting Language) Rules, 2015 dated 9th September, 2015	Lesson 16 E-filing
14.	General Circular No. 01/2016 dated 12th January, 2016	Lesson 12 Preparation and Presentation of Reports

**I. This amendment the Ministry vide Circular 36/2014 dated 17th September, 2014** omitted clarification (iv) in General Circular no. 21 of 2014 dated 18th June, 2014, which provided that “Salaries paid by companies to regular staff as well as to volunteers of the companies (in proportion to company’s time/hours spent specifically on CSR) can be factored into CSR project cost as part of CSR expenditure.

## **II. Consolidated Financial Statements**

Various stakeholders’ representations were received by the Ministry of Corporate Affairs seeking clarifications on the manner of presentation of notes in Consolidated Financial statement (CFS) to be prepared under Schedule III to the Act.

The Ministry of Corporate Affairs after consultation with the Institute of Chartered Accountants of India clarified vide its circular No. 39/2014 dated 14th October, 2014 clarified that Schedule III to the Act read with the applicable Accounting Standards does not envisage that a company while preparing its CFS merely repeats the disclosures made by it under stand-alone accounts being consolidated. In the CFS, the company would need to give all disclosures relevant for CFS only.

## **IV. Corporate Social Responsibility**

Vide Companies (**Corporate Social Responsibility Policy**) Amendment Rules, 2014 dated 12th September, 2014, after the words “but such expenditure” the words and comma “including expenditure on administrative overheads,” in rule 4, sub-rule (6) of Companies (Corporate Social Responsibility Policy) Rules, 2014, has been inserted.

The amended rule is read as under:

Companies may build CSR capacities of their own personnel as well as those of their Implementing agencies through Institutions with established track records of at least three financial years but such expenditure *including expenditure on administrative overheads*, shall not exceed five percent of total CSR expenditure of the company in one financial year.

## **V. Amendments in the Companies (Accounts) Rules, 2014, with respect to manner of consolidation**

The amendment vide Companies (Accounts) Amendment Rules, 2014 dated 14th October, 2014 has inserted proviso to Rule 6 relating to Manner of consolidation of Accounts.

Rule 6 provides that the consolidation of Financial Statements of the company shall be made in accordance with the provisions of schedule III of the Act and applicable accounting standards.

The amendment exempts preparation of consolidated financial statement by an intermediate wholly-owned subsidiary, other than a wholly-owned subsidiary whose immediate parent is a company incorporated outside India from the applicability of the Rule.

Further it is provided that nothing contained in this rule shall, subject to any other law or regulation, apply for the financial year commencing from the 1st day of April, 2014 and ending on the 31st March, 2015, in case of a company which does not have a subsidiary or subsidiaries but has one or more associate companies or joint ventures or both, for the consolidation of financial statement in respect of associate companies or joint ventures or both, as the case may be.”

Further, Ministry vide Companies (Accounts) Amendment Rules, 2015 dated 16th January, 2015 inserted third proviso stating that Rule 6 shall not apply in respect of consolidation of financial statement by a company having subsidiaries incorporated outside India only for the financial year commencing on or after 1st April, 2014.

#### **IV. Capitalization of Costs – Clarification on AS-10 and AS-16**

Representations were received by the Ministry seeking clarification on capitalization of costs in cases of Competitive Bid Power Projects. The clarifications sought were with regard to capitalization of borrowing costs incurred during extended delay in commercial production for reasons beyond the developer's control, and whether capitalization of power plant should be unit- wise or project- wise.

The Ministry after consultation with Accounting Standards Board of the Institute of Chartered Accountants of India clarified vide General Circular no. 35/2014 dated 27th August, 2014 that Accounting Standards AS-10 and AS-16 prescribe the principles of capitalization of various costs based on the underlying concept that only such expenditure should be capitalized as form a part of the cost of fixed assets which increase the worth of the assets. Cost incurred during the extended delay in commencement of commercial production after the plant is otherwise ready does not increase the worth of fixed assets. Such costs cannot, therefore, be capitalized.

Accounting Standard AS 16, inter alia provides guidance with regard to part capitalization where some units of a project are complete. In case one of the units of the project is ready for commercial production and is capable of being used while construction continues for the other units, costs should be capitalized in relation to that part once the part is ready for commercial production.

Further it has been clarified that AS 10 and AS 16 are applicable irrespective of whether the power projects are 'Cost Plus projects' or 'Competitive Bid projects'.

#### **V. Notice of address to the Registrar at which books of account are to be maintained in Form AOC 5**

First proviso to sub-section (1) of Section 128 provides that the books of Accounts and other relevant papers may be kept at such place in India as the Board of Directors decide and where such a decision is taken, the company shall within seven days thereof, file with the registrar a notice in writing giving the full address of that other place.

The Ministry vide Companies (Accounts) Amendment Rules, 2015, dated 16th January inserted that notice regarding address at which books of account may be kept shall be in Form AOC-5.

#### **VI. Companies (Indian Accounting Standards) Rules, 2015**

The Ministry in exercise of the powers conferred by section 133 read with 469 of the Companies Act, 2013 and sub-section 210A of the Companies Act, 1956, the Central Government, in consultation with the National Advisory Committee on Accounting Standards, issued Companies (Indian Accounting Standards) Rules, 2015 on 16.02.2015.

The rules are applicable from 01.04.2015.

Any company may comply with the Indian Accounting Standards (Ind AS) for financial statements for accounting periods beginning on or after 1st April, 2015, with the comparatives for the periods ending on 31st March, 2015, or thereafter.

#### **Transition Period**

- I. The following companies shall comply with the Indian Accounting Standards (Ind AS) for the accounting periods beginning on or after 1st April, 2016, with the comparatives for the periods ending on 31st March, 2016, or thereafter, namely:-
  - (a) companies whose equity or debt securities are listed or are in the process of being listed on any stock exchange in India or outside India and having net worth of rupees five hundred crore or more;



- (b) companies other than those covered by sub-clause (a) of clause (ii) of sub rule (1) and having net worth of rupees five hundred crore or more;
  - (c) holding, subsidiary, joint venture or associate companies of companies covered by sub-clause (a) of clause (ii) of sub- rule (1) and sub-clause (b) of clause (ii) of sub- rule (1) as the case may be; and
- II. The following companies shall comply with the Indian Accounting Standards (Ind AS) for the accounting periods beginning on or after 1st April, 2017, with the comparatives for the periods ending on 31st March, 2017, or thereafter, namely:-
- (a) companies whose equity or debt securities are listed or are in the process of being listed on any stock exchange in India or outside India and having net worth of less than rupees five hundred crore;
  - (b) companies other than those covered in clause (ii) of sub - rule (1) and sub clause (a) of clause (iii) of sub-rule (1), that is, unlisted companies having net worth of rupees two hundred and fifty crore or more but less than rupees five hundred crore.
  - (c) holding, subsidiary, joint venture or associate companies of companies covered under sub-clause (a) of clause (iii) of sub- rule (1) and sub-clause (b) of clause (iii) of sub - rule (1), as the case may be.

The exemption has been given from mandatory compliance of Indian Accounting Standards to companies whose securities are listed or are in the process of being listed on SME Exchange as referred to in Chapter XB or on the Institutional Trading Platform without initial public offering in accordance with the provisions of Chapter XC of the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2009.

Detailed Rules are available at [www.mca.gov.in](http://www.mca.gov.in)

**VII. Vide Companies (Corporate Social Responsibility Policy) Amendment Rules, 2015 substitution have been made in Rule 4 sub-rule (2) of the Companies (Corporate Social Responsibility Policy) Rules, 2014.**

The amended sub-rule is read as under :

- The Board of a company may decide to undertake its CSR activities approved by the CSR committee, through a registered trust or a registered society or a company *established under section 8 of the Act by the company, either singly or alongwith its holding or subsidiary or subsidiary or associate company, or alongwith any other company or holding or subsidiary or associate company of such other company, or otherwise:*

Provided that –

- (i) if such trust, society or company is *not established by the company, either singly or alongwith its holding or subsidiary or subsidiary or associate company, or alongwith any other company or holding or subsidiary or associate company of such other company* shall have an established track record of three years in undertaking similar programs or projects.

**IX. Clarification with regard to circulation and filing of financial statement under relevant provisions of the Companies Act, 2013**

The Ministry of Corporate Affairs via General Circular No 11/2015 dated 21<sup>st</sup> July, 2015 has clarified that a company holding a general meeting after giving a shorter notice as provided under section 101(1) of the Companies Act may also circulate financial statements (to be laid/considered in the same general meeting) at such shorter notice.

Ministry in consultation with ICAI has clarified that in case of a foreign subsidiary, which is not required to get its accounts audited as per legal requirements prevalent in the country of its incorporation and which does not get such accounts audited, the holding/parent Indian may place/file such unaudited accounts to comply with requirements

of Section 136(1) and 137(1) as applicable These, however, would need to be translated in English, if the original accounts are not in English Further, the format of accounts of foreign subsidiaries should be, as far as possible, in accordance with requirements under Companies Act, 2013 In case this is not possible, a statement indicating the reasons for deviation may be placed/filed along with such accounts

#### **X. MCA Notification No. S.O. 2437 (E) dated 4<sup>th</sup> September , 2015**

MCA has exempted government companies producing Defense Equipment including the Space Research from sub-section (6) of section 129 of the

Companies Act, 2013 (18 of 2013), and paras 5 (ii) (a) (1), 5 (ii) (a) (2), 5(ii) (e), 5 (iii), 5 (viii) (a), 5 (viii) (b), 5 (viii) (c) and 5 (viii) (e) relating to Additional Information of the General Instructions for preparation of Statement of Profit and Loss in Schedule III of the Companies Act, 2013 subject to fulfilment of following conditions, namely:—

##### **Conditions:**

- A. The Board of Directors of the Company has given consent with regard to non-disclosure of information relating to paras 5(ii)(a)(1), 5(ii)(a)(2), 5(ii)(e), 5(iii), 5(viii)(a), 5(viii)(b), 5(viii)(c) and 5(viii)(e), as may be applicable;
- B. The Company shall disclose in the Notes forming part of the balance sheet and profit and loss account, the fact of grant of exemption under this notification;
- C. The company shall comply with the prescribed Accounting Standards;
- D. The company shall ensure that its financial statements represent a true and fair state of affairs of its finances; and
- E. The company shall maintain and file such information as may be prescribed or called for or required by the government or the Reserve Bank of India or any other regulator.

This Notification Shall Be Applicable In Respect Of Financial Statement Prepared In Respect Of The Financial Year Ending On Or After The 31<sup>st</sup> March 2016

#### **XI. MCA Notification No. G. S.R 679 (E) dated 4<sup>th</sup> September , 2015**

The Central Government has made the following further alterations in Schedule III to the Companies Act, 2013 , namely:—

In the said Schedule, in Part I- Balance Sheet,-

- (i) Under the heading “Equity and Liabilities”, in para (4), for “(b) Trade payables” the following has been substituted, namely:—
 

“(b) Trade Payables:-

  - (A) total outstanding dues of micro enterprises and small enterprises; and
  - (B) total outstanding dues of creditors other than micro enterprises and small enterprises.”.
- (ii) Under the heading “Notes: General Instructions for preparation of Balance Sheet”, in para 6, after sub-para F the following has been inserted, namely:—
 

“FA. Trade Payables

The following details relating to Micro, Small and Medium Enterprises shall be disclosed in the notes:-

- (a) the principal amount and the interest due thereon (to be shown separately) remaining unpaid to any supplier at the end of each accounting year;
- (b) the amount of interest paid by the buyer in terms of section 16 of the Micro, Small and Medium Enterprises Development Act, 2006, along with the amount of the payment made to the supplier beyond the appointed day during each accounting year;
- (c) the amount of interest due and payable for the period of delay in making payment (which have been paid but beyond the appointed day during the year) but without adding the interest specified under the Micro, Small and Medium Enterprises Development Act, 2006;
- (d) the amount of interest accrued and remaining unpaid at the end of each accounting year; and
- (e) the amount of further interest remaining due and payable even in the succeeding years, until such date when the interest dues above are actually paid to the small enterprise, for the purpose of disallowance of a deductible expenditure under section 23 of the Micro, Small and Medium Enterprises Development Act, 2006.

**Explanation.-** The terms ‘appointed day’, ‘buyer’, ‘enterprise’, ‘micro enterprise’, ‘small enterprise’ and ‘supplier’, shall have the same meaning assigned to those under clauses (b), (d), (e), (h), (m) and (n) respectively of section 2 of the Micro, Small and Medium Enterprises Development Act, 2006.”.

## **XII. Companies (Accounts) Second Amendment Rules, 2015, dated 4<sup>th</sup> September 2015**

In rule 2, in sub-rule (1), after clause (d), has been inserted, the following amended rule read as under

“(da) “Indian Accounting Standards” means the Indian Accounting Standards referred to in rule 3 and Annexure to the Companies (Indian Accounting Standards) Rules, 2015;”

after rule 4 the following rule has been inserted, the following amended rule read as under

**4A. Forms and items contained in financial statements.-** The financial statements shall be in the form specified in Schedule III to the Act and comply with Accounting Standards or Indian Accounting Standards as applicable:

Provided that the items contained in the financial statements shall be prepared in accordance with the definitions and other requirements specified in the Accounting Standards or the Indian Accounting Standards, as the case may be.”.

in rule 8, in sub-rule (3), the following proviso has been inserted at the end, the following amended rule read as under

“Provided that the requirement of furnishing information and details under this sub-rule shall not apply to a Government company engaged in producing defence equipment.”.

in rule 12, for sub-rule (1) the following sub-rule shall be substituted

“(1) Every company shall file the financial statements with Registrar together with Form AOC-4 and the consolidated financial statement, if any, with Form AOC-4 CFS.”.

For Form AOC-4, the following Form AOC-4 and AOC-4 CFS have been substituted.

### **XIII. Companies (Filing of Documents and Forms in Extensible Business Reporting language) Rules, 2015, Dated 9th September, 2015**

The following amended rule read as under:-

**Definitions:** - (1) In these rules, unless the context otherwise requires,-

- (a) **“Act”** means the Companies Act, 2013;
- (b) **“Annexure”** means annexure appended to these rules;
- (c) **“Documents and forms”** means the documents and forms required to be filed with any authority as specified under the Act or rules or regulations made thereunder;
- (d) **“Extensible Business Reporting Language”** (XBRL), means a standardised language for communication in electronic form to express, report or file financial information by the companies under the Act;
- (e) **“Taxonomy”** means in XBRL, an electronic dictionary for reporting the business data as approved by the Central Government in respect of any documents or forms indicated in these rules.

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

**Filing of financial statement with Registrar :-** The following class of companies shall file their financial statement and other documents under section 137 of the Act, with the Registrar in e-form AOC-4 XBRL given in Annexure-I for the financial years commencing on or after 1<sup>st</sup> April,2014 using the XBRL taxonomy given in Annexure II, namely:-

- (i) all companies listed with any Stock Exchange(s) in India and their Indian subsidiaries; or
- (ii) all companies having paid up capital of rupees five crore or above;
- (iii) all companies having turnover of rupees hundred crore or above; or
- (iv) all companies which were hitherto covered under the Companies (Filing of documents and Forms in Extensible Business Reporting Language) Rules, 2011:

Provided that the companies in Banking, Insurance, Power Sector and Non Banking Financial companies are exempted from XBRL filing.

**Filing of cost audit report** - A company required to furnish cost audit report and other documents to the Central Government under sub-section (6) of section 148 of the Act and rules made thereunder , shall file such report and other documents using the XBRL taxonomy given in Annexure-III for the financial years commencing on or after 1<sup>st</sup> April ,2014 in e-form CRA-4 specified under the Companies (Cost Records and Audit) Rules, 2014

The following Form is available on MCA website.

### **XIV. Frequently Asked Questions (FAQs) with regard to Corporate Social Responsibility under section135 of the Companies Act, 2013**

Section 135 of the Companies Act, 2013, Schedule VII of the Act and Companies CSR Policy Rules, 2014 read with General Circular dated 18th June, 2014 issued by the Ministry of Corporate Affairs, provide the broad contour within which eligible Companies are required to formulate their CSR policies including activities to be undertaken and implement the same in the right earnest. While complying with the Corporate Social Responsibility ('CSR') provisions of the Act, Board of the eligible companies are empowered to appraise and approve their CSR policy including CSR projects or programmes or activities to be undertaken. In this connection, Ministry has been receiving several queries and references seeking further clarifications on various issues relating to CSR provision of the Act.

2. In continuation to this Ministry's General Circular dated 18th June, 2014 and 17th September, 2014, a set of FAQs along with response of the Ministry is provided for facilitating effective implementation of CSR :

### **FREQUENTLY ASKED QUESTIONS ON CORPORATE SOCIAL RESPONSIBILITIES**

Sl. No. FAQs

**1. Whether CSR provisions of the Companies Act, 2013 is applicable to all companies?**

CSR provisions of the Companies Act, 2013 is applicable to every company registered under the Companies Act, 2013 and any other previous Companies law having

- net worth of rupees five hundred crore or more, or
- turnover of rupees one thousand crore or more or
- a net profit of rupees five crore or more during any financial year

**2. What is meaning of 'any financial year' mentioned above ?**

"Any Financial year" referred under Sub- Section (1) of Section 135 of the Act read with rule 3(2) of Companies CSR Rule, 2014 implies any of the three preceding financial years (refer General Circular No. 21/2014, dated 18th June, 2014)

**3. Whether CSR expenditure of a company can be claimed as a business expenditure ?**

The amount spent by a company towards CSR cannot be claimed as business expenditure. The Finance Act, 2014 provides that any expenditure incurred by an assessee on the activities relating to Corporate Social Responsibility referred to in section 135 of the Companies Act, 2013 shall not be deemed to be an expenditure incurred by the assessee for the purposes of the business or profession.

**4. Whether the 'average net profit' criteria for section 135(5) is Net profit before tax or Net profit after tax?**

Computation of net profit for section 135 is as per section 198 of the Companies Act, 2013 which is primarily PROFIT BEFORE TAX (PBT).

**5. Can the CSR expenditure be spent on the activities beyond Schedule VII ?**

General Circular No. 21 2014 dated 18th June, 2014 of MCA has clarified that the statutory provision and provisions of CSR Rules, 2014, is to ensure that activities undertaken in pursuance of the CSR policy must be relatable to Schedule VII of the Companies Act, 2013. The entries in the said Schedule VII must be interpreted liberally so as to capture the essence of the subjects enumerated in the said Schedule. The items enlisted in the Schedule VII of the Act, are broad-based and are intended to cover a wide range of activities. The General Circular also provides an illustrative list of activities that can be covered under CSR. In a similar way many more can be covered. It is for the Board of the company to take a call on this.

**6. What tax benefits can be availed under CSR?**

No specific tax exemptions have been extended to CSR expenditure per se. The finance Act, 2014 also clarifies that expenditure on CSR does not form part of business expenditure. While no specific tax exemption has been extended to expenditure incurred on CSR, spending on several activities like contributions to Prime Minister's Relief Fund, scientific research, rural development projects, skill

development projects, agricultural extension projects, etc., which find place in Schedule VII, already enjoy exemptions under different sections of the Income-tax Act, 1961.

**7. Which activities would not qualify as CSR ?**

- The CSR projects or programs or activities that benefit only the employees of the company and their families.
- One-off events such as marathons/awards/charitable contribution/advertisement/sponsorships of TV programmes etc.
- Expenses incurred by companies for the fulfillment of any other Act/Statute of regulations (such as Labour Laws, Land Acquisition Act, 2013, Apprentice Act, 1961 etc.)
- Contribution of any amount directly or indirectly to any political party.
- Activities undertaken by the company in pursuance of its normal course of business.
- The project or programmes or activities undertaken outside India.

**8. Whether a holding or subsidiary of a company which fulfils the criteria under section 135(1) has to comply with section 135, even if the holding and subsidiary itself does not fulfill the criteria.**

Holding or subsidiary of a company does not have to comply with section 135(1) unless the holding or subsidiary itself fulfills the criteria.

**9. Whether provisions of CSR are applicable on section 8 company, if it fulfills the criteria of section 135(1) of the Act.**

Section 135 of the Act reads " Every company ", *i.e.*, no specific exemption is given to section 8 companies with regard to applicability of section 135, hence, section 8 companies are required to follow CSR provisions

**10. Can contribution of money to a trust/Society/Section 8 Companies by a company be treated as CSR expenditure of the company?**

General Circular.No. 21/2014 of MCA dated June 18, 2014 clarifies that Contribution to Corpus of a Trust/Society/Section 8 companies etc. will qualify as CSR expenditure as long as :

- (a) the Trust/Society/section 8 company etc. is created exclusively for undertaking CSR activities or
- (b) where the corpus is created exclusively for a purpose directly relatable to a subject covered in Schedule VII of the Act.

**11. Whether display of CSR policy of a company on website of the company is mandatory or not?**

As per section 135(4) the Board of Directors of the company shall, after taking into account the recommendations of CSR Committee, approve the CSR Policy for the company and disclose contents of such policy in its report and the same shall be displayed on the company's website, if any (refer rules 8 and 9 of CSR Policy, Rules 2014).

**12. Whether reporting of CSR is mandatory in Board's Report?**

The Board's Report of a company qualifying under section 135(1) pertaining to a financial year commencing on or after the 1st day of April, 2014 shall include an annual report on CSR containing particulars specified in Annexure. (refer rule 9 of CSR Policy, Rules 2014).

**13. Whether it is mandatory for Foreign Company to give report on CSR activity ?**

In case of a foreign company, the balance sheet filed under sub-clause (b) of subsection (1) of section 381 shall contain an Annexure regarding report on CSR.

**14. Whether contribution towards disaster relief qualifies as CSR or not?**

(May please refer point No. 7 to the annexure to General Circular dated 18th June, 2014 issued by Ministry of Corporate Affairs).

**15. Whether contribution in kind can be monetized to be shown as CSR expenditure ?**

Section 135 prescribes “shall ensure that company spends”. The company has to spend the amount.

**16. If a company spends in excess of 2 per cent of its average net profit of three preceding years on CSR in a particular year, can the excess amount spent be carried forward to the next year and be offset against the required 2 per cent CSR expenditure of the next year ?**

Any excess amount spent (*i.e.*, more than 2 per cent as specified in section 135) cannot be carried forward to the subsequent years and adjusted against that year’s CSR expenditure.

**17. Can the unspent amount from out of the minimum required CSR expenditure be carried forward to the next year?**

The Board is free to decide whether any unspent amount from out of the minimum required CSR expenditure is to be carried forward to the next year. However, the carried forward amount should be over and above the next year’s CSR allocation equivalent to at least 2 per cent of the average net profit of the company of the immediately preceding three years.

**18. What is the role of Government in monitoring implementation of CSR by companies under the provision of the Companies Act, 2013 ?**

The main thrust and spirit of the law is not to monitor but to generate conducive environment for enabling the corporates to conduct themselves in a socially responsible manner, while contributing towards human development goals of the country.

The existing legal provisions like mandatory disclosures, accountability of the CSR Committee and the Board, provisions for audit of the accounts of the company, etc., provide sufficient safeguards in this regard. Government has no role to play in monitoring implementation of CSR by companies

**19. Whether government is proposing to establish any mechanism for third parties to monitor the quality and efficacy of CSR expenditure as well as to have an impact assessment of CSR by Companies ?**

Government has no role to play in engaging external experts for monitoring the quality and efficacy of CSR expenditure of companies. Boards/CSR Committees are fully competent to engage third parties to have an impact assessment of its CSR programme to validate compliance of the CSR provisions of the law.

**20. Can CSR funds be utilized to fund Government Scheme?**

The objective of this provision is indeed to involve the corporates in discharging their social responsibility with their innovative ideas and management skills and with greater efficiency and better outcomes. Therefore, CSR should not be interpreted as a source of financing the resource gaps in Government Scheme. Use of corporate innovations and management skills in the delivery of ‘public goods’ is at the core of CSR implementation by the companies. In-principle, CSR fund of companies should not be used as a source of funding Government Schemes. CSR projects should have a larger multiplier effect than that under the Government schemes.

However, under CSR provision of the Act and rules made thereunder, the Board of the eligible company is competent to take decision on supplementing any Government Scheme provided the scheme permits corporates participation and all provisions of Section 135 of the Act and rules thereunder are complied by the company.

**21. Who is the appropriate authority for approving and implementation of the CSR programmes/projects of a company ? What is Government's role in this regard ?**

Government has no role to play in this regard. Section 135 of the Act, Schedule VII and Companies CSR Policy Rules, 2014 read with General Circular dated 18th June, 2014 issued by the ministry of Corporate Affairs, provide the broad contour within which eligible companies are required to formulate their CSR policies including activities to be undertaken and implement the same in the right earnest.

Therefore, all CSR programmes/projects should be approved by the Boards on the recommendations of their CSR Committees. Changes, if any, in the programme/project should also be undertaken only with the approval of the Committee/Board.

**22. How can companies with small CSR funds take up CSR activities in a project/programme mode?**

A well designed CSR project or programme can be managed with even small fund. Further, there is a provision in the CSR Policy Rules, 2014 that such companies can combine their CSR programs with other similar companies by way of pooling their CSR resources. (refer rule 4 in Companies (CSR Policy) Rules, 2014).

**23. Whether involvement of employees of the company in CSR project/programmes of a company can be monetized and accounted for under the head of 'CSR expenditure'?**

Contribution and involvement of employees in CSR activities of the company will no doubt generate interest/pride in CSR work and promote transformation from corporate social responsibility (CSR) as an obligation to socially responsible corporate (SRC) in all aspects of their functioning. Companies therefore, should be encouraged to involve their employees in CSR activities. However monetization of pro bono services of employees would not be counted towards CSR expenditure.

3. This issues with the approval of Competent Authority.



The text of the Circulars issued under this Chapter appended as under:

1

**General Circular No. 35/2014**

**F.No. 17/66/2013/CL-V**

**Government of India**

**Ministry of Corporate Affairs**

5th Floor, 'A' Wing Shastri Bhawan,  
Dr. R.P. Road, New Delhi

Dated: 27th August 2014

To,

All Regional Directors,

All Registrars of Companies,

All Stakeholders.

**Subject : Clarification Accounting Standards (AS) 10- Capitalization of Cost - regarding.**

Sir,

1. Government has received a number of representations seeking clarifications on capitalization of costs in case of Competitive Bid power projects. The clarifications sought were with regard to capitalization of borrowing costs incurred during extended delay in commercial production for reasons beyond the developer's control, and whether capitalization of power plant should be unit- wise or project-wise. The matter has been examined in consultation with the Accounting Standards Board (ASB) of the Institute of Chartered Accountants of India (ICAI).
2. Accounting Standards AS-10 and AS-16 prescribe the principles of capitalization of various costs based on the underlying concept that only such expenditure should be capitalized as form a part of the cost of fixed assets which increase the worth of the assets. Cost incurred during the extended delay in commencement of commercial production after the plant is otherwise ready does not increase the worth of fixed assets. Such costs cannot, therefore, be capitalized.
3. Accounting Standards AS-16, *inter alia* provides guidance with regard to part capitalization where some units of a project are complete. In case one of the units of the project is ready for commercial production and is capable of being used while construction continues for the other units, costs should be capitalized in relation to that part once the part is ready for commercial production.
4. It is further clarified that AS-10 and AS-16 are irrespective of whether the power projects are 'Costs Plus projects' or 'Competitive Bid Projects'.

This issues with approval of the competent authority.

Yours faithfully

**(S.K. Verma)**

*Assistant Director (Policy)*

Ph: 23073067

Copy to:

1. E-Governance Section and web contents Officer to place this circular on the Ministry website.
2. Guard File.

**2****General Circular No. 36/2014****F.No.05/01/2014-CSR****Government of India****Ministry of Corporate Affairs**

5th Floor, 'A'Wing  
Shastri Bhawan, Dr. R.P. Road,  
New Delhi-110001  
Dated: 17.09.2014

To

All Regional Director,  
All Registrar of Companies,  
All Stakeholders.

**Subject: Clarification with regard to provisions of Corporate Social Responsibility (CSR) under section 135 of the Companies Act, 2013**

Sir,

In continuation of the General Circular No. 21 of 2014 dated 18.06.2014, the following clarifications are hereby issued:

- (i) Rule 4(6) of the Companies (Corporate Social Responsibility Policy) Rules, 2014 as notified on 27.02.2014 has been amended by notification dated 12.09.2014; and
- (ii) Consequently, clarification (iv) in General Circular No. 21 of 2014 dated 18.06.2014, stands omitted.

2. This issues with the approval of Competent Authority.

Yours faithfully,

**(Seema Rath)***Assistant Director (CSR)*

Tel: 011-23384657

*Copy to:*

1. PSO to Secretary
2. PPS to Additional Secretary
3. PS to DG(IICA)
4. PS to JS(M)/JS(B)/JS(ADM)/JS(SP)/DII (NS)/EA/DII (Policy)
5. DIR (AK)/ DIR (NC)/ DIR(PS)/DIR (R&A)
6. e-Governance Cell for uploading on website of MCA
7. Guard File.

**3****General Circular No. 39/2014****No. 4/2/2014-CL-I****Government of India****Ministry of Corporate Affairs**5th Floor, "A" Wing, Shastri Bhavan,  
Dr R.P. Road, New Delhi.

Dated: 14th October, 2014

To

All Regional Directors,

All Registrars of Companies,

All Stakeholders.

**Subject: Clarification on matters relating to consolidated Financial Statement.**

Sir,

Government has received representations from stakeholders seeking clarifications on the manner of presentation of notes in Consolidated Financial Statement (CFS) to be prepared under Schedule III to the Companies Act, 2013(Act). These representations have been examined in consultation with the Institute of Chartered Accountants of India (ICAI) and it is clarified that Schedule III to the Act read with the applicable Accounting Standards does not envisage that a company while preparing its CFS merely repeats the disclosures made by it under stand-alone accounts being consolidated. In the CFS, the company would need to give all disclosures relevant for CFS only.

2. This issues with the approval of the competent authority.

Yours faithfully,

**(KMS Narayanan)***Assistant Director (Policy)*

Copy to :

1. e-Governance Section and web contents Officer to place this circular on the Ministry website
2. Guard File

## 4

**MINISTRY OF CORPORATE AFFAIRS****NOTIFICATION**

New Delhi, the 12th September, 2014

**G.S.R. 644(E).**—In exercise of the powers conferred under Section 135 and sub-sections (1) and (2) of Section 469 of the Companies Act, 2013 (18 of 2013), the Central Government hereby makes the following rules to amend the Companies (Corporate Social Responsibility Policy) Rules, 2014, namely:—

1. (1) These rules may be called the Companies (Corporate Social Responsibility Policy) Amendment Rules, 2014.
- (2) They shall come into force on the date of their publication in the Official Gazette.
2. In the Companies (Corporate Social Responsibility Policy) Rules, 2014, in rule 4, in sub-rule (6), after the words “but such expenditure” the words and comma “including expenditure on administrative overheads,” shall be inserted.

[F. No. 1/18/2013-CL-V-Part]

**MANOJ KUMAR**  
*Jt. Secy.*

*Note* : The principal notification was published in the Gazette of India *vide* No. G.S.R. 129(E), dated 27.02.2014.

**5****MINISTRY OF CORPORATE AFFAIRS****NOTIFICATION**

New Delhi, the 14th October, 2014

**G.S.R. 723(E).**—In exercise of the powers conferred by sub-sections (1) and (3) of section 128, subsection (3) of section 129, section 133, section 134, sub-section (4) of section 135, sub-section (1) of section 136, section 137 and section 138 read with section 469 of the Companies Act, 2013 (18 of 2013), the Central Government hereby makes the following rules to amend the Companies (Accounts) Rules, 2014, namely:-

1. (1) These rules may be called the Companies (Accounts) Amendment Rules, 2014.

(2) They shall come into force on the date of their publication in the Official Gazette.

2. In the Companies (Accounts) Rules, 2014, in rule 6, after the existing proviso, the following provisos shall be inserted, namely:-

“Provided further that nothing in this rule shall apply in respect of preparation of consolidated financial statement by an intermediate wholly-owned subsidiary, other than a wholly-owned subsidiary whose immediate parent is a company incorporated outside India:

Provided also that nothing contained in this rule shall, subject to any other law or regulation, apply for the financial year commencing from the 1st day of April, 2014 and ending on the 31st March, 2015, in case of a company which does not have a subsidiary or subsidiaries but has one or more associate companies or joint ventures or both, for the consolidation of financial statement in respect of associate companies or joint ventures or both, as the case may be. ”

[F. No. 1/19/2013-CL-V-Part]

**AMARDEEP SINGH BHATIA**

*Jt. Secy.*

*Note :* The principal rules were published in the Gazette of India, Extraordinary, Part II, Section 3, Subsection (i) *vide* number G.S.R. 239(E), dated the 31st March, 2014.

## 6

## MINISTRY OF CORPORATE AFFAIRS

## NOTIFICATION

New Delhi, the 16th January, 2015

**G.S.R. 37(E).**—In exercise of the powers conferred by Section 469 of the Companies Act, 2013 (18 of 2013), the Central Government hereby makes the following rules further to amend the Companies (Accounts) Rules, 2014, namely:—

1. (1) These rules may be called the Companies (Accounts) Amendment Rules, 2015.

(2) They shall come into force on the date of their publication in the Official Gazette.

2. In the Companies (Accounts) Rules, 2014,-

(i) after rule 2, following rule shall be inserted, namely:-

**“2A. Notice of address at which books of account are to be maintained.**—For the purposes of the first proviso to sub-section (1) of Section 128, the notice regarding address at which books of account may be kept shall be in Form AOC-5.”

(ii) in rule 6, after the third proviso, the following proviso shall be inserted, namely :—

“Provided also that nothing in this rule shall apply in respect of consolidation of financial statement by a company having subsidiary or subsidiaries incorporated outside India only for the financial year commencing on or after 1st April, 2014.”

(iii) in the Annexure, after Form AOC-4, the following Form shall be inserted, namely :—

[F. No. 1/19/2013-CL-V-Part]

**AMARDEEP SINGH BHATIA**

*Jt. Secy.*

*Note :* The principal rules were published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) *vide* number G.S.R. 239(E), dated the 31st March, 2014 and was subsequently amended by notification number G.S.R. 723(E), dated the 14th October, 2014

AOC-5 is available at MCA site.

## 7

## MINISTRY OF CORPORATE AFFAIRS

## NOTIFICATION

New Delhi, the 19th January, 2015

**G.S.R. 43(E).**— In exercise of the powers conferred under section 135 and sub-sections (1) and (2) of Section 469 of the Companies Act, 2013 (18 of 2013), the Central Government hereby makes the following rules further to amend the Companies (Corporate Social Responsibility Policy) Rules, 2014, namely:—

1. (1) These rules may be called the Companies (Corporate Social Responsibility Policy) Amendment Rules, 2015.

(2) They shall come into force on the date of their publication in the Official Gazette.

2. In the Companies (Corporate Social Responsibility Policy) Rules, 2014, in rule 4, in sub-rule (2),—

- (i) for the words “established by the company or its holding or subsidiary or associate company under section 8 of the Act or otherwise”, the words “established under section 8 of the Act by the company, either singly or alongwith its holding or subsidiary or associate company, or alongwith any other company or holding or subsidiary or associate company of such other company, or otherwise” shall be substituted;
- (ii) in the proviso, in clause (i), for the words “not established by the company or its holding or subsidiary or associate company, it”, the words “not established by the company, either singly or alongwith its holding or subsidiary or associate company, or alongwith any other company or holding or subsidiary or associate company of such other company” shall be substituted.

[F. No. 1/18/2013-CL-V-Part]

**AMARDEEP SINGH BHATIA**

*Jt. Secy.*

*Note* : The principal rules were published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), *vide* number G.S.R. 129(E), dated the 27th February, 2014 and was subsequently amended by notification number G.S.R. 644(E), dated the 12th September, 2014.

8

**General Circular No. 1//2015****No. 1//19/2013-CL-V****Government of India****Ministry of Corporate Affairs**

5th Floor, A wing, Shastri Bhavan,  
Dr R.P. Road, New Delhi  
Dated 21<sup>st</sup> ,July ,2015

To

All Regional Directors,

All Registrars of companies,

All Stakeholders.

Subject: Clarification with regard to circulation and filing of financial statement under relevant provisions of the Companies Act, 2013-reg.

Sir,

Stakeholders have drawn attention to the proviso to section 101(1) of the Companies Act, 2013 (Act) which allows general meetings to be called at a shorter notice than twenty one days, and sought clarification as to whether provisions of section 136 would also allow circulation of financial statements at a shorter notice if conditions under section 101 are fulfilled.

1.2 The matter has been examined and it is clarified that a company holding a general meeting after giving a shorter notice as provided under section 101 of the Act may also circulate financial statements (to be laid/considered in the same general meeting) at such shorter notice.

2.1 Attention has also been drawn to the provisions of clause (a) of fourth proviso to section 136(1) which require every company having a subsidiary or subsidiaries to place on its website, if any, separate audited accounts in respect of each of its subsidiary, Further, fourth proviso to section '137(1) requires that a company shall attach along with its financial statements to be filed with the Registrar, the accounts of its subsidiary(ies) which have been incorporated outside India and which have not established their place of business in India. Clarification has been sought on –

- (a) Whether a company covered under above provisions can place/file unaudited accounts oi a foreign subsidiary if the audit of such foreign subsidiary is not a mandatory legal requirement in the country where such foreign subsidiary has been incorporated and such audit has not been conducted. and:
- (b) whether accounts of such foreign subsidiary would need to be as per format under Schedule III/Accounting Standards or the format as per country of incorporation of the foreign subsidiary would be sufficient.

2.2 The matter has been examined in the Ministry in consultation with ICAI and it is clarified that in case of a foreign subsidiary, which is not required to get its accounts audited as per legal requirements prevalent in the country of its



incorporation and which does not get such accounts audited, the holding/parent Indian may place/file such unaudited accounts to comply with requirements of Section 136(1) and 137(1) as applicable. These, however, would need to be translated in English, if the original accounts are not in English. Further, the format of accounts of foreign subsidiaries should be, as far as possible, in accordance with requirements under Companies Act, 2013. In case this is not possible, a statement indicating the reasons for deviation may be placed/filed alongwith such accounts.

This issues with the approval of the competent authority'

Yours faithfully

**(KMS Narayanan)**

**Assistant Director**

Copy to:-

1. e-Governance Section and Web Contents Officer to place this circular on the Ministry's website
2. Guard File

**9****MINISTRY OF CORPORATE AFFAIRS****NOTIFICATION****New Delhi, the 4th September, 2015**

**S.O. 2437(E).**— In exercise of the powers conferred by sub-section (6) of section 129 of the Companies Act, 2013 (18 of 2013), the Central Government hereby, in public interest, directs that paras 5 (ii) (a) (1), 5 (ii) (a) (2), 5(ii) (e), 5 (iii), 5 (viii) (a), 5 (viii) (b), 5 (viii) (c) and 5 (viii) (e) relating to Additional Information of the General Instructions for preparation of Statement of Profit and Loss in Schedule III of the Companies Act, 2013 shall not apply to government companies producing Defence Equipment including the Space Research subject to fulfilment of following conditions, namely:—

**Conditions:**

- A. The Board of Directors of the Company has given consent with regard to non-disclosure of information relating to paras 5(ii)(a)(1), 5(ii)(a)(2), 5(ii)(e), 5(iii), 5(viii)(a), 5(viii)(b), 5(viii)(c) and 5(viii)(e), as may be applicable;
  - B. The Company shall disclose in the Notes forming part of the balance sheet and profit and loss account, the fact of grant of exemption under this notification;
  - C. The company shall comply with the prescribed Accounting Standards;
  - D. The company shall ensure that its financial statements represent a true and fair state of affairs of its finances; and
  - E. The company shall maintain and file such information as may be prescribed or called for or required by the government or the Reserve Bank of India or any other regulator.
2. This notification shall be applicable in respect of financial statement prepared in respect of the financial years ending on or after the 31st March, 2016.

**[F. No. 1/19/2013-CL-V-Part]****AMARDEEP SINGH BHATIA, Jt. Secy.**

**10**

**MINISTRY OF CORPORATE AFFAIRS**

**NOTIFICATION**

**New Delhi, the 4th September, 2015**

**G.S.R. 679(E).**— In exercise of the powers conferred by sub-section (1) of section 467 of the Companies Act, 2013 (18 of 2013), the Central Government hereby makes the following further alterations in Schedule III (hereinafter referred to as said Schedule) to the said Act, namely:—

2. In the said Schedule, in Part I- Balance Sheet,-

- (i) Under the heading “Equity and Liabilities”, in para (4), for “(b) Trade payables” the following shall be substituted, namely:—

“(b) Trade Payables:-

- (A) total outstanding dues of micro enterprises and small enterprises; and  
(B) total outstanding dues of creditors other than micro enterprises and small enterprises.”.

- (ii) Under the heading “Notes: General Instructions for preparation of Balance Sheet”, in para 6, after sub-para F the following shall be inserted, namely:—

“FA. Trade Payables

The following details relating to Micro, Small and Medium Enterprises shall be disclosed in the notes:-

- (a) the principal amount and the interest due thereon (to be shown separately) remaining unpaid to any supplier at the end of each accounting year;
- (b) the amount of interest paid by the buyer in terms of section 16 of the Micro, Small and Medium Enterprises Development Act, 2006, along with the amount of the payment made to the supplier beyond the appointed day during each accounting year;
- (c) the amount of interest due and payable for the period of delay in making payment (which have been paid but beyond the appointed day during the year) but without adding the interest specified under the Micro, Small and Medium Enterprises Development Act, 2006;
- (d) the amount of interest accrued and remaining unpaid at the end of each accounting year; and
- (e) the amount of further interest remaining due and payable even in the succeeding years, until such date when the interest dues above are actually paid to the small enterprise, for the purpose of disallowance of a deductible expenditure under section 23 of the Micro, Small and Medium Enterprises Development Act, 2006.

**Explanation.-** The terms ‘appointed day’, ‘buyer’, ‘enterprise’, ‘micro enterprise’, ‘small enterprise’ and ‘supplier’, shall have the same meaning assigned to those under clauses (b), (d), (e), (h), (m) and (n) respectively of section 2 of the Micro, Small and Medium Enterprises Development Act, 2006.”.

3. This notification shall come into force on the date of its publication in the Official Gazette.

[F. No. 1/19/2013/CL.V]

**AMARDEEP SINGH BHATIA, Jt. Secy.**

**11**

**MINISTRY OF CORPORATE AFFAIRS**

**NOTIFICATION**

**New Delhi, the 4th September, 2015**

**G.S.R. 680(E).**— In exercise of the powers conferred under sub-sections (1) and (3) of section 128, sub-section (3) of section 129, section 133, section 134, sub-section (4) of section 135, sub-section (1) of section 136, section 137 and section 138 read with section 469 of the Companies Act, 2013, the Central Government hereby makes the following rules further to amend the Companies (Accounts) Rules, 2014, namely:—

1. (1) These rules may be called the Companies (Accounts) Second Amendment Rules, 2015.

(2) They shall come into force from the date of their publication in the Official Gazette.

2. In the Companies (Accounts) Rules, 2014,

(i) in rule 2, in sub-rule (1), after clause (d), following shall be inserted, namely:—

“(da) “Indian Accounting Standards” means the Indian Accounting Standards referred to in rule 3 and Annexure to the Companies (Indian Accounting Standards) Rules, 2015;”

(ii) after rule 4 the following rule shall be inserted, namely:—

**“4A. Forms and items contained in financial statements.**— The financial statements shall be in the form specified in Schedule III to the Act and comply with Accounting Standards or Indian Accounting Standards as applicable:

Provided that the items contained in the financial statements shall be prepared in accordance with the definitions and other requirements specified in the Accounting Standards or the Indian Accounting Standards, as the case may be.”

(iii) in rule 8, in sub-rule (3), the following proviso shall be inserted at the end, namely:—

“Provided that the requirement of furnishing information and details under this sub-rule shall not apply to a Government company engaged in producing defence equipment.”

(iv) in rule 12, for sub-rule (1) the following sub-rule shall be substituted, namely:—

“(1) Every company shall file the financial statements with Registrar together with Form AOC-4 and the consolidated financial statement, if any, with Form AOC-4 CFS.”

(v) In Annexure, for Form AOC-4, the following Form AOC-4 and AOC-4 CFS shall be substituted.

Form is available on MCA website.

**[F. No. 1/19/2013-CL-V-Part]**

**AMARDEEP SINGH BHATIA, Jt. Secy.**

**Note:** The principal notification was published in the Gazette of India vide No. G.S.R. 239(E), dated 31.03.2014 and was amended vide notification number G.S.R. 723(E) dated 14.10.2014 and G.S.R 37 (E) dated 16.01.2015.

**12**

**[TO BE PUBLISHED IN THE GAZETTE OF INDIA,  
EXTRAORDINARY, PART II, SECTION 3, SUB SECTION (i)]**

**Ministry of Corporate Affairs**

**Notification**

**New Delhi, the 9<sup>th</sup> September, 2015**

G.S.R. \_ (E). - In exercise of the powers conferred by sub-sections (1) and (2) of section 469 read with section 398 of the Companies Act, 2013 (18 of 2013), and in supersession of the Companies (Filing of Documents and Forms in Extensible Business Reporting Language) Rules, 2011, except as respects things done or omitted to be done before such supersession, the Central Government hereby makes the following rules, namely:

**1. Short title and commencement.**

(1) These rules may be called the Companies (Filing of Documents and Forms in Extensible Business Reporting language) Rules, 2015.

(2) They shall come into force from the date of their publication in the Official Gazette

**2. Definitions.**

(1) In these rules, unless the context otherwise requires,-

- (a) **“Act”** means the Companies Act, 2013;
- (b) **“Annexure”** means annexure appended to these rules;
- (c) **“Documents and forms”** means the documents and forms required to be filed with any authority as specified under the Act or rules or regulations made thereunder;
- (d) **“Extensible Business Reporting Language”** (XBRL), means a standardised language for communication in electronic form to express, report or file financial information by the companies under the Act;
- (e) **“Taxonomy”** means in XBRL, an electronic dictionary for reporting the business data as approved by the Central Government in respect of any documents or forms indicated in these rules.

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

**3. Filing of financial statement with Registrar.**

The following class of companies shall file their financial statement and other documents under section 137 of the Act, with the Registrar in e-form AOC-4 XBRL given in Annexure-I for the financial years commencing on or after 1<sup>st</sup> April, 2014 using the XBRL taxonomy given in Annexure II, namely:-

- (i) all companies listed with any Stock Exchange(s) in India and their Indian subsidiaries; or
- (ii) all companies having paid up capital of rupees five crore or above;

- (iii) all companies having turnover of rupees hundred crore or above; or
- (iv) all companies which were hitherto covered under the Companies (Filing of documents and Forms in Extensible Business Reporting Language) Rules, 2011:

Provided that the companies in Banking, Insurance, Power Sector and Non Banking Financial companies are exempted from XBRL filing.

#### **4. Filing of cost audit report.**

A company required to furnish cost audit report and other documents to the Central Government under sub-section (6) of section 148 of the Act and rules made thereunder , shall file such report and other documents using the XBRL taxonomy given in Annexure-III for the financial years commencing on or after 1<sup>st</sup> April ,2014 in e-form CRA-4 specified under the Companies (Cost Records and Audit) Rules, 2014

The following Form is available on MCA website.

**F. No. 1/19/2013-CL-V**

**(Amardeep Singh Bhatia) Joint Secretary**

**13**

**General Circular No. 01/2016**

**No.05/19/2015-CSR**

**Government of India**

**Ministry of Corporate Affairs**

5th Floor, 'A'Wing  
Shastri Bhawan, Dr. R.P. Road,  
New Delhi-110001

Dated: 12th January, 2016

To

All Regional Director,

All Registrar of Companies,

All Stakeholders.

**Subject: Frequently Asked Questions (FAQs) with regard to Corporate Social Responsibility under section 135 of the Companies Act, 2013**

Section 135 of the Companies Act, 2013, Schedule VII of the Act and Companies CSR Policy Rules, 2014 read with General Circular dated 18th June, 2014 issued by the Ministry of Corporate Affairs, provide the broad contour within which eligible Companies are required to formulate their CSR policies including activities to be undertaken and implement the same in the right earnest. While complying with the Corporate Social Responsibility ('CSR') provisions of the Act, Board of the eligible companies are empowered to appraise and approve their CSR policy including CSR projects or programmes or activities to be undertaken. In this connection, Ministry has been receiving several queries and references seeking further clarifications on various issues relating to CSR provision of the Act.

2. In continuation to this Ministry's General Circular dated 18th June, 2014 and 17th September, 2014, a set of FAQs along with response of the Ministry is provided for facilitating effective implementation of CSR :

**FREQUENTLY ASKED QUESTIONS ON CORPORATE SOCIAL RESPONSIBILITIES**

Sl. FAQs

No.

**1. Whether CSR provisions of the Companies Act, 2013 is applicable to all companies?**

CSR provisions of the Companies Act, 2013 is applicable to every company registered under the Companies Act, 2013 and any other previous Companies law having

- net worth of rupees five hundred crore or more, or
- turnover of rupees one thousand crore or more or
- a net profit of rupees five crore or more during any financial year

**2. What is meaning of 'any financial year' mentioned above ?**

“Any Financial year” referred under Sub- Section (1) of Section 135 of the Act read with rule 3(2) of Companies CSR Rule, 2014 implies any of the three preceding financial years (refer General Circular No. 21/2014, dated 18th June, 2014)

**3. Whether CSR expenditure of a company can be claimed as a business expenditure ?**

The amount spent by a company towards CSR cannot be claimed as business expenditure. The Finance Act, 2014 provides that any expenditure incurred by an assessee on the activities relating to Corporate Social Responsibility referred to in section 135 of the Companies Act, 2013 shall not be deemed to be an expenditure incurred by the assessee for the purposes of the business or profession.

**4. Whether the ‘average net profit’ criteria for section 135(5) is Net profit before tax or Net profit after tax?**

Computation of net profit for section 135 is as per section 198 of the Companies Act, 2013 which is primarily PROFIT BEFORE TAX (PBT).

**5. Can the CSR expenditure be spent on the activities beyond Schedule VII ?**

General Circular No. 21 2014 dated 18th June, 2014 of MCA has clarified that the statutory provision and provisions of CSR Rules, 2014, is to ensure that activities undertaken in pursuance of the CSR policy must be relatable to Schedule VII of the Companies Act, 2013. The entries in the said Schedule VII must be interpreted liberally so as to capture the essence of the subjects enumerated in the said Schedule. The items enlisted in the Schedule VII of the Act, are broad-based and are intended to cover a wide range of activities. The General Circular also provides an illustrative list of activities that can be covered under CSR. In a similar way many more can be covered. It is for the Board of the company to take a call on this.

**6. What tax benefits can be availed under CSR?**

No specific tax exemptions have been extended to CSR expenditure per se. The finance Act, 2014 also clarifies that expenditure on CSR does not form part of business expenditure. While no specific tax exemption has been extended to expenditure incurred on CSR, spending on several activities like contributions to Prime Minister's Relief Fund, scientific research, rural development projects, skill development projects, agricultural extension projects, etc., which find place in Schedule VII, already enjoy exemptions under different sections of the Income-tax Act, 1961.

**7. Which activities would not qualify as CSR ?**

- The CSR projects or programs or activities that benefit only the employees of the company and their families.
- One-off events such as marathons/awards/charitable contribution/advertisement/sponsorships of TV programmes etc.
- Expenses incurred by companies for the fulfillment of any other Act/Statute of regulations (such as Labour Laws, Land Acquisition Act, 2013, Apprentice Act, 1961 etc.)
- Contribution of any amount directly or indirectly to any political party.
- Activities undertaken by the company in pursuance of its normal course of business.
- The project or programmes or activities undertaken outside India.

**8. Whether a holding or subsidiary of a company which fulfils the criteria under section 135(1) has**



**to comply with section 135, even if the holding and subsidiary itself does not fulfill the criteria.**

Holding or subsidiary of a company does not have to comply with section 135(1) unless the holding or subsidiary itself fulfills the criteria.

**9. Whether provisions of CSR are applicable on section 8 company, if it fulfills the criteria of section 135(1) of the Act.**

Section 135 of the Act reads “ Every company “, *i.e.*, no specific exemption is given to section 8 companies with regard to applicability of section 135, hence, section 8 companies are required to follow CSR provisions

**10. Can contribution of money to a trust/Society/Section 8 Companies by a company be treated as CSR expenditure of the company?**

General Circular.No. 21/2014 of MCA dated June 18, 2014 clarifies that Contribution to Corpus of a Trust/ Society/Section 8 companies etc. will qualify as CSR expenditure as long as :

- (a) the Trust/Society/section 8 company etc. is created exclusively for undertaking CSR activities or
- (b) where the corpus is created exclusively for a purpose directly relatable to a subject covered in Schedule VII of the Act.

**11. Whether display of CSR policy of a company on website of the company is mandatory or not?**

As per section 135(4) the Board of Directors of the company shall, after taking into account the recommendations of CSR Committee, approve the CSR Policy for the company and disclose contents of such policy in its report and the same shall be displayed on the company’s website, if any (refer rules 8 and 9 of CSR Policy, Rules 2014).

**12. Whether reporting of CSR is mandatory in Board’s Report?**

The Board’s Report of a company qualifying under section 135(1) pertaining to a financial year commencing on or after the 1st day of April, 2014 shall include an annual report on CSR containing particulars specified in Annexure. (refer rule 9 of CSR Policy, Rules 2014).

**13. Whether it is mandatory for Foreign Company to give report on CSR activity ?**

In case of a foreign company, the balance sheet filed under sub-clause (b) of subsection (1) of section 381 shall contain an Annexure regarding report on CSR.

**14. Whether contribution towards disaster relief qualifies as CSR or not?**

(May please refer point No. 7 to the annexure to General Circular dated 18th June, 2014 issued by Ministry of Corporate Affairs).

**15. Whether contribution in kind can be monetized to be shown as CSR expenditure ?**

Section 135 prescribes “shall ensure that company spends”. The company has to spend the amount.

**16. If a company spends in excess of 2 per cent of its average net profit of three preceding years on CSR in a particular year, can the excess amount spent be carried forward to the next year and be offset against the required 2 per cent CSR expenditure of the next year ?**

Any excess amount spent (*i.e.*, more than 2 per cent as specified in section 135) cannot be carried forward to the subsequent years and adjusted against that year’s CSR expenditure.

**17. Can the unspent amount from out of the minimum required CSR expenditure be carried forward**

**to the next year?**

The Board is free to decide whether any unspent amount from out of the minimum required CSR expenditure is to be carried forward to the next year. However, the carried forward amount should be over and above the next year's CSR allocation equivalent to at least 2 per cent of the average net profit of the company of the immediately preceding three years.

**18. What is the role of Government in monitoring implementation of CSR by companies under the provision of the Companies Act, 2013 ?**

The main thrust and spirit of the law is not to monitor but to generate conducive environment for enabling the corporates to conduct themselves in a socially responsible manner, while contributing towards human development goals of the country.

The existing legal provisions like mandatory disclosures, accountability of the CSR Committee and the Board, provisions for audit of the accounts of the company, etc., provide sufficient safeguards in this regard. Government has no role to play in monitoring implementation of CSR by companies

**19. Whether government is proposing to establish any mechanism for third parties to monitor the quality and efficacy of CSR expenditure as well as to have an impact assessment of CSR by Companies ?**

Government has no role to play in engaging external experts for monitoring the quality and efficacy of CSR expenditure of companies. Boards/CSR Committees are fully competent to engage third parties to have an impact assessment of its CSR programme to validate compliance of the CSR provisions of the law.

**20. Can CSR funds be utilized to fund Government Scheme?**

The objective of this provision is indeed to involve the corporates in discharging their social responsibility with their innovative ideas and management skills and with greater efficiency and better outcomes. Therefore, CSR should not be interpreted as a source of financing the resource gaps in Government Scheme. Use of corporate innovations and management skills in the delivery of 'public goods' is at the core of CSR implementation by the companies. In-principle, CSR fund of companies should not be used as a source of funding Government Schemes. CSR projects should have a larger multiplier effect than that under the Government schemes.

However, under CSR provision of the Act and rules made thereunder, the Board of the eligible company is competent to take decision on supplementing any Government Scheme provided the scheme permits corporates participation and all provisions of Section 135 of the Act and rules thereunder are complied by the company.

**21. Who is the appropriate authority for approving and implementation of the CSR programmes/projects of a company ? What is Government's role in this regard ?**

Government has no role to play in this regard. Section 135 of the Act, Schedule VII and Companies CSR Policy Rules, 2014 read with General Circular dated 18th June, 2014 issued by the ministry of Corporate Affairs, provide the broad contour within which eligible companies are required to formulate their CSR policies including activities to be undertaken and implement the same in the right earnest.

Therefore, all CSR programmes/projects should be approved by the Boards on the recommendations of their CSR Committees. Changes, if any, in the programme/project should also be undertaken only with the approval of the Committee/Board.

**22. How can companies with small CSR funds take up CSR activities in a project/programme mode?**

A well designed CSR project or programme can be managed with even small fund. Further, there is a provision in the CSR Policy Rules, 2014 that such companies can combine their CSR programs with other similar companies by way of pooling their CSR resources. (refer rule 4 in Companies (CSR Policy) Rules, 2014).

**23. Whether involvement of employees of the company in CSR project/programmes of a company can be monetized and accounted for under the head of 'CSR expenditure'?**

Contribution and involvement of employees in CSR activities of the company will no doubt generate interest/pride in CSR work and promote transformation from corporate social responsibility (CSR) as an obligation to socially responsible corporate (SRC) in all aspects of their functioning. Companies therefore, should be encouraged to involve their employees in CSR activities. However monetization of pro bono services of employees would not be counted towards CSR expenditure.

3. This issues with the approval of Competent Authority.

**Seema Rath**

**Deputy Director (CSR-Cell)**

**Copy to :**

1. E-Governance Cell and Web contents Officer to upload on the website of this Ministry.

# Chapter X

## AUDIT AND AUDITORS

**Circulars and Orders issued by the Ministry under this chapter, so far:**

Sl. No.	Particulars	Impact on Lesson of ACLP
1.	General Circular No. 33/2014 dated 31st July, 2014.	Lesson 11 Auditors
2.	General Circular 42/2014 dated 12th November, 2014.	Lesson 11 Auditors
3.	General Circular 02/2015 dated 11th February, 2015.	Lesson 11 Auditors
4.	Companies (Removal of Difficulties) Seventh Order, 2014.	Lesson 11 Auditors
5.	Companies (Auditor's Report) Order, 2015.	Lesson 11 Auditors
6.	Companies (Cost Records and Audit) Amendment Rules, 2014 Dated 12th June, 2015.	Lesson 11 Auditors
7.	Companies (Audit and Auditors) Amendment Rules, 2015 Dated 14th December, 2015.	Lesson 11 Auditors

### **I. Issue involved**

Whether sections 139(5) and 139(7) of the Companies Act, 2013 (New Act), which deal with appointment of auditors by Comptroller and Auditor General of India (C&AG), applies to 'deemed Government Companies'?

### **Clarifications issued**

Doubts have been raised about applicability of sections 139(5) and 139(7) of the Companies Act, 2013 (New Act), which deal with appointment of auditors by Comptroller and Auditor General of India (C&AG), to 'deemed Government Companies' referred to in section 619B of the Companies Act 1956 (Old Act) i.e. companies where ownership or control lies with two or more Government companies or corporations etc in the manner detailed in section 619B *ibid*. Stakeholders have pointed out that the New Act does not contain specific provisions about 'deemed Government companies' on the lines of section 619B of the Old Act. Clarification has been sought whether, under the new Act, such deemed Government companies would be subject to audit by the C&AG in the same manner as Government Companies. The above issue has been examined and it is clarified that the new Act does not alter the position with regard to audit of such deemed Government companies through C&AG and thus such companies are covered under sub-section (5) and (7) of section 139 of the New Act. Further, it has also been observed that the words "any other company owned or controlled, directly or indirectly..... by the Central Government and partly by one or more State Governments" appearing in sub-sections (5) and (7) of section 139 of the New Act are to be read with the definition of 'control' in section 2(27) of the New Act, Thus documents like articles of association and shareholders

agreements etc envisaging control under section 2(27) are to be taken into account while deciding whether an individual company, other than those referred above, is covered under section 139(5)/139(7) of the New Act. Clarification has also been sought about the manner in which the information about incorporation of a company subject to audit by an auditor to be appointed by the C&AG is to be communicated to the C&AG for the purpose of appointment of first auditors under section 139(7) of the New Act. It is hereby clarified that such responsibility rests with both, the Government concerned and the relevant company. To avoid any confusion it is further clarified that it will primarily be the responsibility of the company concerned to intimate to the C&AG about its incorporation along with name, location of registered office, capital structure of such a company immediately on its incorporation. It is also incumbent on such a company to share such intimation to the relevant Government so that such Government may also send a suitable request to the C&AG.

## **II. Companies (Cost Records and Audit) Rules, 2014**

The Central Government notified Companies (cost records and audit) Rules, 2014 on 30th June, 2014. The rules inter-alia prescribes –

- (i) Sectors for which Cost Records made applicable
- (ii) Format of maintenance of cost records in form CRA-1.
- (iii) Applicability for Cost Audit
- (iv) Filing of notice of appointment of Cost Auditor with the Central Government in e-form CRA-2.
- (v) Format of Cost Audit Report in Form CRA-3.
- (vi) Filing of Cost Audit Report along with full information and explanation on

Every reservation or qualification contained therein, in form CRA-4 to Central Government.

Due to delay in availability of form CR-2 on MCA-21 portal, the last date for filing was extended vide circular no. 42/2014 dt. 12th November, 2014 and Circular no. 2/2015 dt. 11th February, 2015.

On 12th June, 2015, the Central Government issued Companies (Cost Record and Audit) Amendment Rules, 2015, by which Form CRA-2 and CRA-4 are substituted. (These are available at [www.mca.gov.in](http://www.mca.gov.in))

## **IV. Companies (Removal of Difficulties) Seventh Order, 2014**

### **Issue involved**

Section 143 of the Companies Act, 2013, provides for the powers and duties of the auditors and auditing standards. Sub-sections (5) and (7) of section 139 provide for power of the Comptroller and Auditor-General of India to appoint an auditor duly qualified to be appointed as an auditor in a Government company or any other company owned or controlled, directly or indirectly, by the Central Government, or by any State Government or Governments, or partly by the Central Government and partly by one or more State Governments;

Sub-section (5) of Section 143 of the said Act which provides for power of the Comptroller and Auditor-General of India to conduct supplementary audit does not specifically cover companies 'owned or controlled, directly or indirectly, by the Central Government, or by any State Government or Governments, or partly by the Central Government and partly by one or more State Governments.

Difficulties have arisen in implementation of the provisions of sub-section (5) of section 143 for companies referred above.

### Order issued

In exercise of the powers conferred by sub-section (1) of section 470 of the Companies Act, 2013 the central government issued the Companies (Removal of Difficulties) Seventh Order, 2014 on 4th September, 2014 to make section 143(5) of the Companies Act, read as under :-

***“In the case of a Government company or any other company owned or controlled, directly or indirectly, by the Central Government, or by any State Government or Governments, or partly by the Central Government and partly by one or more State Governments, the Comptroller and Auditor General of India shall appoint the auditor under sub-section (5) or sub-section (7) of Section 139 and direct such auditor the manner in which the accounts of the company are required to be audited and thereupon the auditor so appointed shall submit a copy of the audit report to the Comptroller and Auditor-General of India which, among other things, include the directions, if any, issued by the Comptroller and Auditor-General of India, the action taken thereon and its impact on the accounts and financial statement of the company”***

### V. Companies (Auditor’s Report) Order, 2015

Section 143 (11) of the Companies Act, 2013 provides that the Central Government may, in consultation with the National Financial Reporting Authority, by general or special order, direct, in respect of such class or description of companies, as may be specified in the order, that the auditor’s report shall also include a statement on such matters as may be specified therein.

Accordingly, in exercise of the powers conferred by sub-section (11) of section 143 of the Companies Act, 2013 the central government vide notification S.O. 990(E).- dated 10th April, 2015 issued the Companies (Auditor’s Report) Order, 2015 applicable to every company including a foreign company. The order is not applicable to-

- Banking company,
- Insurance company,
- Company licensed to operate under section 8 of the Companies Act, 2013,
- One Person Company and Small Company
- Private limited company (with a paid up capital and reserves not more than rupees fifty lakh and which does not have loan outstanding exceeding rupees twenty five lakh from any bank or financial institution and does not have a turnover exceeding rupees five crore at any point of time during the financial year)

### Contents of the Auditors Report

The order further provides that every report made by the auditor under section 143 of the Companies Act, on the accounts of every company examined by him to which this Order applies for the financial year commencing on or after 1st April, 2014, shall contain the following matters:

- Whether the company is maintaining proper records showing full particulars, including quantitative details and situation of fixed assets;
- Whether these fixed assets have been physically verified by the management at reasonable intervals; whether any material discrepancies were noticed on such verification and if so, whether the same have been properly dealt with in the books of account;
- Whether physical verification of inventory has been conducted at reasonable intervals by the management;
- Are the procedures of physical verification of inventory followed by the management reasonable and adequate

- in relation to the size of the company and the nature of its business. If not, the inadequacies in such procedures should be reported;
- Whether the company is maintaining proper records of inventory and whether any material discrepancies were noticed on physical verification and if so, whether the same have been properly dealt with in the books of account;
  - Whether the company has granted any loans, secured or unsecured to companies, firms or other parties covered in the register maintained under section 189 of the Companies Act. If so,
  - Whether receipt of the principal amount and interest are also regular; and
  - If overdue amount is more than rupees one lakh, whether reasonable steps have been taken by the company for recovery of the principal and interest;
  - Is there an adequate internal control system commensurate with the size of the company and the nature of its business, for the purchase of inventory and fixed assets and for the sale of goods and services. Whether there is a continuing failure to correct major weaknesses in internal control system.
  - In case the company has accepted deposits, whether the directives issued by the Reserve Bank of India and the provisions of sections 73 to 76 or any other relevant provisions of the Companies Act and the rules framed there under, where applicable, have been complied with? If not, the nature of contraventions should be stated; If an order has been passed by Company Law Board or National Company Law Tribunal or Reserve Bank of India or any court or any other tribunal, whether the same has been complied with or not?
  - Where maintenance of cost records has been specified by the Central Government under sub-section (l) of section 148 of the Companies Act, whether such accounts and records have been made and maintained:
  - Is the company regular in depositing undisputed statutory dues including provident fund, employees' state insurance, income-tax, sales-tax, wealth tax, service tax, duty of customs, duty of excise, value added tax, cess and any other statutory dues with the appropriate authorities and if not, the extent of the arrears of outstanding statutory dues as at the last day of the financial year concerned for a period of more than six months from the date they became payable, shall be indicated by the auditor.
  - In case dues of income tax or sales tax or wealth tax or service tax or duty of customs or duty of excise or value added tax or cess have not been deposited on account of any dispute, then the amounts involved and the forum where dispute is pending shall be mentioned. (A mere representation to the concerned Department shall not constitute a dispute).
  - Whether the amount required to be transferred to investor education and protection fund in accordance with the relevant provisions of the Companies Act, 1956 (1 of 1956) and rules made thereunder has been transferred to such fund within time.
  - Whether in case of a company which has been registered for a period not less than five years, its accumulated losses at the end of the financial year are not less than fifty per cent of its net worth and whether it has incurred cash losses in such financial year and in the immediately preceding financial year;
  - Whether the company has defaulted in repayment of dues to a financial institution or bank or debenture holders? If yes, the period and amount of default to be reported:
  - Whether the company has given any guarantee for loans taken by others from bank or financial institutions, the terms and conditions whereof are prejudicial to the interest of the company;
  - Whether term loans were applied for the purpose for which the loans were obtained;

- Whether any fraud on or by the company has been noticed or reported during the year; If yes, the nature and the amount involved is to be indicated.

**Reasons to be stated for unfavourable or qualified answers-**

- Where, in the auditor's report, the answer to any of the questions referred above is unfavourable or qualified, the auditor's report shall also state the reasons for such unfavourable or qualified answer, as the case may be.
- Where the auditor is unable to express any opinion in answer to a particular question, his report shall indicate such fact together with the reasons why it is not possible for him to give an answer to such question.

**VI. Extension of time for filling of E-form CRA-2 and CRA-4**

- 1. Issue Involved :** Non -availability of Revised CRA -2 for filling FY 2015-16 - relaxation of fees.

Clarification Issued

Ministry has clarified that additional fee on account of any delay beyond the prescribed period of 30 days from the date of the board meeting, in which the appointment of the Auditor was made for filling CRA- 2 for the financial year starting on or after 1st April, 2015 were waived for all such filling till 30th June, 2015.

- 2. Issue Involved:** Non -availability of E-form CRA -4 for filling of Cost Audit Report to Central Government for FY 2014-15 - relaxation of fees.

Clarification Issued

Ministry has clarified that Additional fees on delayed filling of form CRA-4 beyond the prescribed period of 30 days from the date of receipt of a copy of Cost Audit Report from the Cost Auditor for the Financial Year starting on or after 1st April, 2014 has also been waived for all such filling till 31st August, 2015.

**VII. Companies (Audit and Auditors) Amendment Rules, 2015 dated 14<sup>th</sup> December ,2015**

Rule 13 has been substituted the amended rule read as under

**“13. Reporting of frauds by auditor and other matters:** (1) If an auditor of a company, in the course of the performance of his duties as statutory auditor, has reason to believe that an offence of fraud, which involves or is expected to involve individually an amount of rupees one crore or above, is being or has been committed against the company by its officers or employees, the auditor shall report the matter to the Central Government.

(2) The auditor shall report the matter to the Central Government as under:-

- the auditor shall report the matter to the Board or the Audit Committee, as the case may be, immediately but not later than two days of his knowledge of the fraud, seeking their reply or observations within forty-five days;
- on receipt of such reply or observations, the auditor shall forward his report and the reply or observations of the Board or the Audit Committee along with his comments (on such reply or observations of the Board or the Audit Committee) to the Central Government within fifteen days from the date of receipt of such reply or observations;
- in case the auditor fails to get any reply or observations from the Board or the Audit Committee within the stipulated period of forty-five days, he shall forward his report to the Central Government along with a note containing the details of his report that was earlier forwarded to the Board or the Audit Committee for which he has not received any reply or observations;



- (d) the report shall be sent to the Secretary, Ministry of Corporate Affairs in a sealed cover by Registered Post with Acknowledgement Due or by Speed Post followed by an e-mail in confirmation of the same;
- (e) the report shall be on the letter-head of the auditor containing postal address, e-mail address and contact telephone number or mobile number and be signed by the auditor with his seal and shall indicate his Membership Number; and
- (f) the report shall be in the form of a statement as specified in Form ADT-4.

(3) In case of a fraud involving lesser than the amount specified in sub-rule (1), the auditor shall report the matter to Audit Committee constituted under section 177 or to the Board immediately but not later than two days of his knowledge of the fraud and he shall report the matter specifying the following:-

- (a) Nature of Fraud with description;
- (b) Approximate amount involved; and
- (c) Parties involved.

(4) The following details of each of the fraud reported to the Audit Committee or the Board under sub-rule (3) during the year shall be disclosed in the Board's Report:-

- (a) Nature of Fraud with description;
- (b) Approximate Amount involved;
- (c) Parties involved, if remedial action not taken; and
- (d) Remedial actions taken.

The text of the Circulars issued under this Chapter appended as under:

1

**General Circular No. 33/2014**

**F. No.I/33/13-CL-V**

**Government of India**

**Ministry of Corporate Affairs**

5th Floor, A Wing, Shastri Bhavan  
Dr R.P. Road, New Delhi

Dated: 31st July, 2014

To

All Regional Directors,

All Registrars of Companies.

**Subject: Clarification with regard to applicability of provisions of section 139(5) and 139(7) of the Companies Act, 2013**

Sir,

Doubts have been raised about applicability of sections 139(5) and 139(7) of the Companies Act, 2013 (New Act), which deal with appointment of auditors by Comptroller and Auditor General of India (C&AG), to 'deemed Government Companies' referred to in section 619B of the Companies Act 1956 (Old Act) i.e. companies where ownership or control lies with two *or more Government* companies or corporations etc in the manner detailed in section 619B *ibid*. Stakeholders have pointed out that the New Act does not contain specific provisions about 'deemed Government companies' on the lines of section 619B of the Old Act. Clarification has been sought whether, under the new Act, such deemed Government companies would be subject to audit by the C&AG in the same manner as Government Companies.

2. The above issue has been examined and it is clarified that the new Act does not alter the position with regard to audit of such deemed Government companies through C&AG and thus such companies are covered under sub-section (5) and (7) of section 139 of the New Act.

3. Further, it has also been observed that the words "any other company owned or controlled, directly or indirectly by the Central Government and partly by one or more State Governments" appearing in sub-sections (5) and (7) of section 139 of the New Act are to be read with the definition of 'control' in section 2(27) of the New Act, Thus documents like articles of association and shareholders agreements etc envisaging control under section 2(27) are to be taken into account while deciding whether an individual company, other than those referred in paragraph 1-2 above, is covered under section 139(5)/139(7) of the New Act.

4. Clarification has also been sought about the manner in which the information about incorporation of a company subject to audit by an auditor to be appointed by the C&AG is to be communicated to the C&AG for the purpose of appointment of first auditors under section 139(7) of the New Act. It is hereby clarified that such responsibility rests with both, the Government concerned and the relevant company. To avoid any confusion it is further clarified that it

will primarily be the responsibility of the company concerned to intimate to the C&AG about its incorporation along with name, location of registered office, capital structure of such a company immediately on its incorporation. It is also incumbent on such a company to share such intimation to the relevant Government so that such Government may also send a suitable request to the C&AG.

5. This issues with the approval of the competent authority.

Yours faithfully,

Sd/-

**(KMS Narayanan)**

*Assistant Director (Policy)*

*Copy to:-*

1. e-Governance Section and web contents Officer to place this circular on the Ministry website
2. Guard File

**2****General Circular No. 42/2014****No. 1/40/2013/CL.V-Part****Government of India****Ministry of Corporate Affairs**5th Floor , "A"wing, Shastri Bhawan,  
Dr.R.P. Road, New Delhi.

Dated: 12th November, 2014

To

All Regional Directors,

All Registrars of Companies,

All Stakeholders.

**Subject : Clarification on matters relating to the Companies (Cost Records and Audit) Rules, 2014.**

Sir,

Government has received representations from stakeholders seeking clarifications about Rules 5(1) and 6(2) of the Companies (Cost Records and Audit) Rules,2014 regarding maintenance of cost records and filing of notice of appointment of the Cost Auditor in Form CRA-2 in electronic mode.

The matter has been examined in the Ministry and the following is clarified:

Considering delay in availability of Form CRA-2 on the MCA website, it has been decided to extend the date of filing of the said Form without penalty/ late fee up to 31st January, 2015. Form CRA-2 will be made available on the MCA website soon. It is noted that some companies have filed Form 23C for appointment of Cost Auditor for the financial year 2014-15. It is clarified that such companies need not file form CRA-2 afresh for the financial year 2014-15.

2. This issues with the approval of the Competent Authority.

Yours faithfully,

**(Kamna Sharma)**  
Assistant Director

Copy to:-

1. E - governance Section and web contents officer to place this circular on the Ministry's website.
2. Guard File

3

**General Circular No. 2/2015**

**No. 1/40/2013-CL-V-Part**  
**Government of India**  
**Ministry of Corporate Affairs**

5th Floor, 'A' Wing, Shastri Bhawan,  
New Delhi: 110001

Dated: 11th February, 2015

To

All Regional Directors,  
All Registrars of Companies,  
All Stakeholders.

**Subject: Extension of time for filing of Notice of appointment of the  
Cost Auditor in Form CRA-2.**

Sir,

In continuation to the General Circular No. 42/2014, the last date of filing of Form CRA-2 without any penalty/late fee is hereby extended upto 31st March, 2015.

2. This issues with the approval of competent authority.

Yours faithfully,  
**(Kamna Sharma)**  
*Assistant Director*  
Tel:23387263

## 4

## MINISTRY OF CORPORATE AFFAIRS

## ORDER

New Delhi, the 4th September, 2014

**S.O. 2226(E).**—Whereas the Companies Act, 2013 (18 of 2013) (hereinafter referred to as the said Act) received the assent of the President on the 29th August, 2013 and section 143 of the Act, which provides for the powers and duties of the auditors and auditing standards, came into force with effect from 1st April, 2014;

And whereas sub-sections (5) and (7) of section 139 of the said Act provide for power of the Comptroller and Auditor-General of India to appoint an auditor duly qualified to be appointed as an auditor in a Government company or any other company owned or controlled, directly or indirectly, by the Central Government, or by any State Government or Governments, or partly by the Central Government and partly by one or more State Governments;

And whereas sub-section (5) of Section 143 of the said Act which provides for power of the Comptroller and Auditor-General of India to conduct supplementary audit does not specifically cover companies 'owned or controlled, directly or indirectly, by the Central Government, or by any State Government or Governments, or partly by the Central Government and partly by one or more State Governments';

And whereas difficulties have arisen in implementation of the provisions of sub-section (5) of section 143 for companies referred to in sub-sections (5) and (7) of section 139 of the said Act;

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 470 of the Companies Act, 2013, the Central Government hereby makes the following Order to remove the aforesaid difficulties, namely :—

**1. Short title and commencement.**

(1) This order may be called the Companies (Removal of Difficulties) Seventh Order, 2014.

(2) It shall come into force on the date of its publication in the Official Gazette.

2. In section 143 of the Companies Act, 2013 in sub-section (5), for the portion beginning with the words "In the case of a Government company" and ending with the words "required to be audited and", the following shall be substituted, namely :

"In the case of a Government company or any other company owned or controlled, directly or indirectly, by the Central Government, or by any State Government or Governments, or partly by the Central Government and partly by one or more State Governments, the Comptroller and Auditor General of India shall appoint the auditor under sub-section (5) or sub-section (7) of Section 139 and direct such auditor the manner in which the accounts of the company are required to be audited and".

[F. No. 1/33/2013-CL.-V]

**AMARDEEP SINGH BHATIA**

*Jt. Secy.*

**5****General Circular No. 08/2015**

**File No./1/40/2013/CL-V**  
**Government of India**  
**Ministry of Corporate Affairs**

'A' Wing, 5th floor, Shastri Bhawan  
Dr. Rajendra Prasad Road, New Delhi-110001

Dated: 12th June, 2015

To,

All Regional Directors,  
All Registrars of Companies,  
All Stakeholders

**Subject : Extension of time for filing of Notice of appointment of the Cost Auditor for the F.Y. 2015-16 in Form CRA-2 and filing of cost audit report to the Central Government for the F.Y. 2014-15 in form CRA-4.**

Sir,

The Ministry has received several representations about the non-availability of the revised form CRA-2 on MCA-21 required for filing of notice of appointment of the Cost Auditor for the F.Y. 2015-16, although the time limit for filing of the same has either lapsed or will be lapsing. The revised form CRA-2 has now been notified on 12th June, 2015 and is available on the MCA21 system for filing.

2. In view of the delay in availability of revised Form CRA-2 on the MCA21 portal, however, the additional fee on account of any delay beyond the prescribed period of 30 days from the date of Board Meeting in which the appointment of the Auditor was made for filing of CRA-2 for the financial year starting on or after 1st April, 2015 is waived for all such filings till 30th June, 2015.

3. The revised e-Form CRA-4 has also been notified vide the above mentioned notification and will be made available on MCA-21 portal shortly. Therefore, on the similar lines mentioned in above paras, additional fees on delayed filing of form CRA- 4 beyond the prescribed period of 30 days from the date of receipt of a copy of Cost Audit Report from the Cost Auditor for the Financial Year starting on or after 1st April, 2014 is also waived for all such filings till 31st August, 2015.

4. This issues with the approval of the Competent Authority.

Yours faithfully,  
**(K.M.S. Narayanan)**  
*Assistant Director*  
Tel: 23387263

*Copy to:*

1. E-governance Section and web content officer to place this circular on the Ministry's website.
2. File No. 52/22/CAB/2015

## 6

**MINISTRY OF CORPORATE AFFAIRS****NOTIFICATION****New Delhi, the 14th December, 2015**

G.S.R. 972(E).— In exercise of the powers conferred by sub-section (12) of section 143 read with sub-section (1) of section 469 of the Companies Act, 2013 (18 of 2013), the Central Government hereby makes the following rules further to amend the Companies (Audit and Auditors) Rules, 2014 namely:-

1. (1) These rules may be called the Companies (Audit and Auditors) Amendment Rules, 2015.
- (2) They shall come into force on the date of their publication in the Official Gazette.
2. In the Companies (Audit and Auditors) Rules, 2014 (hereinafter referred to as the principal rules),-

(i) For rule 13, the following rule shall be substituted, namely:-

**“13. Reporting of frauds by auditor and other matters:**

- (1) If an auditor of a company, in the course of the performance of his duties as statutory auditor, has reason to believe that an offence of fraud, which involves or is expected to involve individually an amount of rupees one crore or above, is being or has been committed against the company by its officers or employees, the auditor shall report the matter to the Central Government.
- (2) The auditor shall report the matter to the Central Government as under:-
  - (a) the auditor shall report the matter to the Board or the Audit Committee, as the case may be, immediately but not later than two days of his knowledge of the fraud, seeking their reply or observations within forty-five days;
  - (b) on receipt of such reply or observations, the auditor shall forward his report and the reply or observations of the Board or the Audit Committee along with his comments (on such reply or observations of the Board or the Audit Committee) to the Central Government within fifteen days from the date of receipt of such reply or observations;
  - (c) in case the auditor fails to get any reply or observations from the Board or the Audit Committee within the stipulated period of forty-five days, he shall forward his report to the Central Government along with a note containing the details of his report that was earlier forwarded to the Board or the Audit Committee for which he has not received any reply or observations;
  - (d) the report shall be sent to the Secretary, Ministry of Corporate Affairs in a sealed cover by Registered Post with Acknowledgement Due or by Speed Post followed by an e-mail in confirmation of the same;
  - (e) the report shall be on the letter-head of the auditor containing postal address, e-mail address and contact telephone number or mobile number and be signed by the auditor with his seal and shall indicate his Membership Number; and



- (f) the report shall be in the form of a statement as specified in Form ADT-4.
- (3) In case of a fraud involving lesser than the amount specified in sub-rule (1), the auditor shall report the matter to Audit Committee constituted under section 177 or to the Board immediately but not later than two days of his knowledge of the fraud and he shall report the matter specifying the following:-
- (a) Nature of Fraud with description;
  - (b) Approximate amount involved; and
  - (c) Parties involved.
- (4) The following details of each of the fraud reported to the Audit Committee or the Board under sub-rule (3) during the year shall be disclosed in the Board's Report:-
- (a) Nature of Fraud with description;
  - (b) Approximate Amount involved;
  - (c) Parties involved, if remedial action not taken; and
  - (d) Remedial actions taken.
- (5) The provision of this rule shall also apply, mutatis mutandis, to a Cost Auditor and a Secretarial Auditor during the performance of his duties under section 148 and section 204 respectively.”;
- (ii) In the principal rules, after rule 14 and before FORM NO. ADT-1, insert the word “Annexure”;
- (iii) In the principal rules, in Form No. ADT-4, –
- (A) in line 3, for the word, figures and brackets “rule 13(4)”, the word, figures, letter and brackets “rule 13(2)(f)” shall be substituted; and
  - (B) in line 25, in item No. (10), for the word, figures and brackets “rule 13(1)”, the word, figures, letter and brackets “rule 13(2)(a)” shall be substituted.

[F. No. 1/33/2013-CL-V]

**AMARDEEP SINGH BHATIA, Jt. Secy.**

**Note :** The principal rules were published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), *vide* number G.S.R. 246(E), dated the 31st March, 2014 and were subsequently amended *vide* G.S.R. 722(E) dated 14th October, 2014

# Chapter XI

## APPOINTMENT AND QUALIFICATION OF DIRECTORS

**Circulars & Amendment in Rules issued by the Ministry under this chapter, so far:**

Sl. No.	<i>Particular</i>	<i>Impact on Lesson of ACLP</i>
1.	General Circular No. 38/2014 dated 14th October, 2014	Lesson 8 Key Managerial Personnel
2.	General Circular No. 03/2015 dated 03rd March, 2015	Lesson 8 Key Managerial Personnel
3.	Companies (Appointment and Qualification of Directors) Amendment Rules, 2014 dated 18th September, 2014	Lesson 8 Key Managerial Personnel
4.	Companies (Appointment and Qualification of Directors) Amendment Rules, 2015 dated 19th January, 2015	Lesson 8 Key Managerial Personnel
5.	MCA Notification No. SO 129(E) dated 9th January, 2015	–

### **I. Refund of Deposit received under Section 160 of the Companies Act, 2013, by Section 8 Companies**

#### **Issue involved**

Section 160 of the Companies Act, 2013 provides that a person who is not a retiring director in terms of section 152 shall, subject to the provisions of the Act, 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.

The relevant provision are silent on the manner in which the amount of deposit of rupees one lakh received under section 160(1) of the Companies Act, 2013 is to be handled if the depositor fails to secure more than twenty five per cent of the total valid votes.

### **Clarification issued**

Clarification sought by companies registered under section 8 of the Companies Act, 2013 about the manner in which the amount of deposit of rupees one lakh received by them under section 160(1) of the Companies Act, 2013 is to be handled if the depositor fails to secure more than 25% of the total valid votes.

The Central Government vide General Circular No. 38/2014 dt. 14th October, 2014 clarified that the Board of directors of section 8 companies is to decide as to whether the deposit made by or on behalf of the person failing to secure more than twenty-five percent of the valid votes is to be forfeited or refunded.

## **II. Filing of e-form DIR 11 & DIR-12 under the Companies Act, 2013**

### **Issue involved**

Following en masse resignation of all the directors of a company and filing of DIR-11 (Notice of resignation of a director to the registrar) before the appointment of new directors results in automatic deactivation of DSC of all the resigned/resigning director(s).

As a result, form DIR-12 (Particulars of appointment of directors and the Key Managerial Personnel and the Changes among them) can't be filed by a company due to lack of an authorised signatory director.

### **Clarification issued**

The Central Government vide General Circular No. 03/2015 dt. 3rd March, 2015 clarified that the Registrar of Companies within their respective jurisdictions are authorized, on request from the stakeholders and after due examination, to allow any one of the resigned director who was an authorized signatory for the purpose of filing DIR-12 only alongwith additional fee and subject to compliance of other provisions of Companies Act, 2013.

The above clarification issued to facilitate the filing of such e-forms till an alternative mechanism is put in place in MCA-21 system.

## **III. Companies (Appointment and Qualification of Directors) Amendment Rules, 2014 dated 18th September, 2014**

The Central Government vide notification dated 18th September, 2014 issued the Companies (Appointment and Qualification of Directors) Amendment Rules, 2014 which provide for following amendments:

- (i) Rule 6(2) amended to rationalize the required information from the applicant registering on the databank of Independent Directors by removing the required details of Income Tax PAN, Mother's and Spouse Name from the databank of Independent Directors.
- (ii) Rule 6(4) amended to remove the requirement of Form DIR-1 to be filled up by a person who desires to get his name included in the databank of Independent Director as the rules omitted the existing Form DIR-1.
- (iii) Rule 9(3) amended to include the term "verify" while applying for allotment of Director Identification Number (DIN) in form DIN-3. Earlier the verification by the applicant provided in Form DIR-4 as attachment to DIN 3. This requirement has now removed as the same is included in revised Form DIN-3.
- (iv) Every individual who has been allotted a DIN under these rules shall report the change if any in his particulars as stated in Form DIN-3. Rule 12 (1) is also amended to include the term "verify" in form DIR 6 itself, which is the prescribed form for intimating change in DIN particulars. Earlier the verification by the applicant provided in Form DIR-7 as attachment to DIN 6.
- (v) New sub rule (4) inserted in Rule 9 to provide that in case the name of a person does not have a last name,

then his or her father's or grandfather's surname shall be mentioned in the last name along with the declaration in Form No. DIR-3A (New Form). This declaration will be submitted alongwith Form DIN-3.

- (vi) Rule 10 amended to replace the concept of "Provisional DIN" with the "Application Number". Now, the system will generate an application number automatically on submission of form DIR-3 on the MCA Portal. This has totally removed the concept of Provisional DIN form the rules.
- (vii) New sub-rule 10A inserted after Rule 10 which provides that-
  - every director, functioning as a director in one or more companies on or before the 30th June, 2007 and who has not yet intimated his DIN to such company or companies shall, within one month of the receipt of Director Identification Number from the Central Government, intimate his Director Identification Number to the company or all companies wherein he is a director as per Form DIR-3B (New Form).
  - The intimation by the company of Director Identification Number of its directors under section 157 of the Act shall be furnished in Form DIR-3C (New Form) within fifteen days of receipt of intimation under section 156.

#### **IV. Companies (Appointment and Qualification of Directors) Amendment Rules, 2015 dated 19th January, 2015**

Rule 15 of Companies (Appointment and Qualification of Directors) Rules, 2014 requires that a company shall intimate resignation of a director to Registrar in Form DIR-12 within 30 days from the date of receipt of notice of resignation and to post such information on its website.

Further, Rule 16 of above rules requires that a resigning director shall forward a copy of his resignation alongwith reasons for such resignation to the Registrar within 30 days from the date of resignation in Form DIR-11 with the prescribed fees.

The Central Government vide notification dated 19th January, 2015 issued the Companies (Appointment and Qualification of Directors) Amendment Rules, 2015 which inserted the following proviso to Rule 16:

“Provided that in case a company has already filed Form DIR-12 with the Registrar under rule 15, a foreign director of such company resigning from his office may authorise in writing a practising chartered accountant or cost accountant in practice or company secretary in practice or any other resident director of the company to sign Form DIR-11 and file the same on his behalf intimating the reasons for the resignation.”

#### **V. Notification regarding authorized officers for filing Compliant in respect of offenses under section 155 of the Companies Act, 2013**

Section 155 of the Companies Act, 2013 (the Act) provides that no individual who has already been allotted a Director Identification Number under section 154, shall apply for, obtain or possess another Director Identification Number.

Section 159 of the Act, further provides that for contravention of above provision, the individual shall be punishable with imprisonment for a term which may extend to six months or with fine which may extend to fifty 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 during which the contravention continues.

The Central Government vide notification no. S.O. 129(E) dated 9th January, 2015 authorized the following officers in the office of Regional Director (Northern Region) at Noida for the purpose of filing compliant under section 159 of the Act, in respect of offences under section 155 of the Act:

1. Dr. Raj Singh, Director
2. Shri A.M. Singh, Joint Director
3. Ms. P. Sheela, Joint Director
4. Shri R.K. Tiwari, Joint Director
5. Shri Ch. Jaganadh Reddy, Assistant Director

The text of the Circulars issued under this Chapter appended as under:

1

**General Circular No. 38/2014**

**No. 1 /22/2013-CL-V**

**Government of India**

**Ministry of Corporate Affairs**

5th Floor, "A" Wing, Shastri Bhavan,  
Dr R.P. Road, New Delhi

Dated: 14th October, 2014

To

All Regional Directors,

All Registrars of Companies.

**Subject: Right of persons other than retiring directors to stand for directorship – Refund of deposit under section 160 of the Companies Act, 2013 in certain cases.**

Sir,

Clarity has been sought by companies registered under section 8 of the Companies Act, 2013 (corresponding to section 25 of Companies Act, 1956) about the manner in which the amount of deposit of rupees one lakh received by them under sub-section (l) of section 160 of the Companies Act, 2013 (Act) is to be handled if the depositor fails to secure more than twenty five per cent of the total valid votes. It has been noted that the relevant provision is silent on such issue.

2. The matter has been examined in the Ministry and it is clarified that in such cases, the Board of directors of a section 8 company is to decide as to whether the deposit made by or on behalf of the person failing to secure more than twenty-five percent of the valid votes is to be forfeited or refunded.

3. This issues with the approval of the competent authority.

Yours faithfully

**(KMS Narayanan)**

*Assistant Director (Policy)*

Copy to:-

- 1 . e-Governance Section and web contents Officer to place this circular on the Ministry website
2. Guard File

**2****General Circular No.03/2015****F.No.MCA21/272/2014****GOVERNMENT OF INDIA****MINISTRY OF CORPORATE AFFAIRS**5th Floor, 'A' Wing Shastri Bhawan,  
Dr. R.P. Road, New Delhi

Dated: 03rd March 2015

To

All Regional Directors

All Registrars of Companies

All Stakeholders

**Subject: Clarification relating to filing of e-form DIR-11 & DIR-12 under the Companies Act, 2013-regarding.**

Sir,

This Ministry has received several representations about the difficulties faced by stakeholders due to deactivation of Digital Signature Certificate (DSC) following en masse resignation of all the directors of a company before appointment of new directors in their places. The difficulty arises because of automatic deactivation of DSC on filing of DIR-11 (Notice of resignation of a director to the Registrar) by the resigned/resigning Director (s), and none of the new Director's details having been filed. As a result, form DIR-12 (Particulars of appointment of directors and the key managerial personnel and the changes among them) cannot be filed by a company due to lack of an authorized signatory Director.

2. In order to enable the filing of such e-forms and till an alternative mechanism is put in place in MCA21 system, it is clarified that the Registrar of Companies within their respective jurisdictions are authorized, on request from the stakeholders, and after due examination, to allow any one of the resigned director who was an authorized signatory Director for the purpose of filing DIR-12 only along with additional fees, as applicable and subject to compliance of other provisions of Companies Act, 2013.

3. This issues with the approval of Secretary, MCA.

Yours faithfully,

**(KMS Narayanan)***Assistant Director (Policy)*

Ph.:23387263

*Copy to:-*

1. E-Governance Section and web contents Officer to place this circular on the Ministry website.
2. Guard File.

**3**

**MINISTRY OF CORPORATE AFFAIRS**

**NOTIFICATION**

**New Delhi, 18th September 2014**

**G.S.R. 671 (E).**—In exercise of the powers conferred by second proviso to sub-section (1), sub-section (4) and clause (f) of sub-section (6) of section 149, sub-sections (3) and (4) of section 150, section 151, sub-section (5) of section 152, section 153, section 154, section 157, section 160, sub-section (1) of section 168 and section 170 read with section 469 of the Companies Act, 2013, the Central Government hereby makes the following rules to amend the Companies (Appointment and Qualification of Directors) Rules, 2014, namely:-

**1. Short title and commencement.**- (1) These rules may be called the Companies (Appointment and Qualification of Directors) Amendment Rules, 2014.

(2) They shall come into force on the date of their publication in the Official Gazette.

2. In the Companies (Appointment and Qualification of Directors) Rules, 2014-

(1) in rule 6, –

(a) in sub-rule (2) –

(i) clause (c) shall be omitted;

(ii) in clause (d), the words “and mother’s name and Spouse’s name (if married)” shall be omitted;

(b) in sub-rule (4), the words letters and figure “in Form DIR-1” shall be omitted;

(2) in rule 9, in sub-rule (3),

(a) (i) in clause (a), for the words “therein and sign the form”, the words “therein, verify and sign the form” shall be substituted;

(ii) sub-clause (iv) shall be omitted.

(b) after sub-rule (3), the following sub-rule shall be inserted, namely:-

“(4) In case the name of a person does not have a last name, then his or her father’s or grandfather’s surname shall be mentioned in the last name along with the declaration in Form No. DIR-3A.”;

(3) in rule 10,–

(a) in sub-rule (1), for the words and letters “the provisional DIN shall be generated by the system automatically which shall not be utilised till the DIN is confirmed by the Central Government”, the words “an application number shall be generated by the system automatically” and letters shall be substituted;

(b) in sub-rule (2), for the words and letters “the provisional DIN” the words “application number” shall be substituted;



- (c) in sub-rule (4), the words and letters “the provisional DIN so allotted by the system shall get lapsed automatically and” shall be omitted;
- (4) after rule 10, the following rule shall be inserted, namely:-
- “10A.(1) Every director, functioning as a director in one or more companies on or before the 30th June, 2007 and who has not yet intimated his DIN to such company or companies shall, within one month of the receipt of Director Identification Number from the Central Government, intimate his Director Identification Number to the company or all companies wherein he is a director as per Form DIR-3B.
- (2) The intimation by the company of Director Identification Number of its directors under section 157 of the Act shall be furnished in Form DIR-3C within fifteen days of receipt of intimation under section 156.”;
- (5) in rule 11, after the words “application received”, the words “alongwith fee as specified in Companies (Registration Offices and Fees) Rules, 2014” shall be inserted ;
- (6) in rule 12, in sub-rule (1), for sub-clause (i),the following sub-clause shall be substituted, namely:-
- ”(1) The applicant shall download Form DIR-6 from the portal, fill in the relevant changes, verify the Form and attach duly scanned copy of the proof of the changed particulars and submit electronically.”;
- (7) the existing Form DIR-1 shall be omitted;
- (8) for the existing Forms DIR-3, the following Form shall be substituted, namely:-
- (DIR-3 may be accessed at [www.mca.gov.in](http://www.mca.gov.in))
- (9) after form DIR-3 as substituted, the forms DIR-3A, DIR-3B and DIR 3C shall be inserted, namely:-
- (DIR-3A,DIR 3B, DIR-3C may be accessed at [www.mca.gov.in](http://www.mca.gov.in))
- (12) form DIR-7 shall be omitted;

[F . No. 01/9/2013(Part-II) CL-V]

**AMARDEEP SINGH BHATIA**

*Jt. Secy.*

*Note:-* The principal rules were published in the Gazette of India, Part II, Section 3, Sub-section(i) vide no. G.S.R. 259(E), dated the 31st March, 2014.

## 4

**MINISTRY OF CORPORATE AFFAIRS****NOTIFICATION****New Delhi, the 19th January, 2015**

**G.S.R. 42(E).**—In exercise of the powers conferred by the second proviso to sub-section (1), subsection (4) and clause (f) of sub-section (6) of section 149, sub-sections (3) and (4) of section 150, section 151, sub-section (5) of section 152, section 153, section 154, section 157, section 160, subsection (1) of section 168 and section 170 read with section 469 of the Companies Act, 2013 (18 of 2013), the Central Government hereby makes the following rules further to amend the Companies (Appointment and Qualification of Directors) Rules, 2014, namely:—

1. (1) These rules may be called the Companies (Appointment and Qualification of Directors) Amendment Rules, 2015.

(2) They shall come into force on the date of their publication in the Official Gazette.

2. In the Companies (Appointment and Qualification of Directors) Rules, 2014, in rule 16, the following proviso shall be inserted, namely:—

“Provided that in case a company has already filed Form DIR-12 with the Registrar under rule 15, a foreign director of such company resigning from his office may authorise in writing a practising chartered accountant or cost accountant in practice or company secretary in practice or any other resident director of the company to sign Form DIR-11 and file the same on his behalf intimating the reasons for the resignation.”.

[F. No. 01/9/2013-CL.V(Part-II)]

**AMARDEEP SINGH BHATIA**

*Jt. Secy.*

**Note.-** The principal rules were published in the Gazette of India, Extraordinary, Part-II, Section 3, Sub-section (i), *vide* number G.S.R. 259(E), dated the 31st March, 2014 and was subsequently amended by notification number G.S.R. 671(E), dated the 18th September, 2014.

# Chapter XII

## MEETINGS OF BOARD AND ITS POWERS

**Circulars, Amendments, Rules issued under this chapter so far :**

Sl. No.	Particulars	Impact on Lesson of ACLP
1.	General Circular No. 30/2014 dated 17th July, 2014.	Lesson 8 Key Managerial Personnel
2.	General Circular 04/2015 dated 10th March, 2015.	Lesson 8 Key Managerial Personnel and Lesson 15 Inter-Corporate Loans, Investments Guarantee and Security
3.	General Circular 06/2015 dated 9th April, 2015.	Lesson 10 Meetings
4.	Companies (Meetings of Board and its Powers) Second Amendment Rules, 2014 dated 14th August, 2014.	Lesson 10 Meetings
5.	Companies (Meetings of Board and its Powers) Amendment Rules, 2015 dated 18th March, 2015.	Lesson 10 Meetings
6.	Companies (Removal of Difficulties) Order, 2015 dated 13th February, 2015.	Lesson 15 Inter-Corporate Loans, Investments Guarantee and Security
7.	Companies (Meetings of Board and its Powers) Second Amendment Rules, 2015 dated 14th December, 2015.	Lesson 8 Key Managerial Personnel

### **I. Related party transactions**

#### **Issues involved**

*What the scope of related party is as mentioned in the second proviso to Section 188(1)*

#### **Clarification issued**

*Scope of second proviso to Section 188(1) :-* Second proviso to sub-section (1) of section 188 requires that no member of the company shall vote on a special resolution to approve the contract or arrangement (referred to in the first proviso), if such a member is a related party. It is clarified that 'related party' referred to in the second proviso has to be construed with reference only to the contract or arrangement for which the said special resolution is being passed. Thus, the term 'related party' in the above context refers only to such related party as may be a related

party in the context of the contract or arrangement for which the said special resolution is being passed. (General Circular No. 30/2014 dated 17th July, 2014).

**Issues involved**

Does section 188 apply to corporate restructuring decisions?

**Clarifications issued**

*Applicability of Section 188 to corporate restructuring, amalgamations etc.* - It is clarified vide General Circular no. 30/2014 dated 17th July, 2014 that transactions arising out of Compromises, Arrangements and Amalgamations dealt with under specific provisions of the Companies Act, 1956/Companies Act, 2013, will not attract the requirements of section 188 of the Companies Act, 2013.

**Issues involved**

Does the past contracts require fresh approvals?

**Clarifications issued**

*Requirement of fresh approvals for past contracts under Section 188.* :- Contracts entered into by companies, after making necessary compliances under Section 297 of the Companies Act, 1956, which already came into effect before the commencement of Section 188 of the Companies Act, 2013, will not require fresh approval under the said section 188 till the expiry of the original term of such contracts. Thus, if any modification in such contract is made on or after 1st April, 2014, the requirements under section 188 will have to be complied with. (General Circular No. 30/2014).

**II. Loans and investments by the company under Section 186.****(a) Grant of Loans and advances to employees****Issues Involved**

Whether the provisions of sections 186 of the Companies Act, 2013 be applicable to grant of loans and advances by the companies to their employees?

**Clarification Issued**

The Ministry of Corporate Affairs received various representations seeking clarity on the grant of loans and advances given to the employees by the companies and the applicability of provisions of section 186 of the Act relating to Loans and investment by company.

Considering the above the Ministry vide General Circular No. 04/2015 dated 10th March, 2015 clarified that the loans and/or advances made by the companies to their employees, other than the managing or whole time directors (which is governed by section 185) shall not governed by the requirements of section 186 of the Companies Act, 2013. However such loans/advances to employees should be in accordance with the conditions of service applicable to employees and also in accordance with the remuneration policy, in cases where such policy is required to be formulated.

**III. Treatment where effective yield on tax free bonds is greater than the prevailing yield****Issues Involved**

In cases where the effective yield (effective rate of return) on tax free bonds is greater than the prevailing yield, will that be violation of sub-section (7) of section 186 of the Companies Act, 2013

**Clarification Issued**

The Ministry of Corporate Affairs (MCA) vide General Circular No. 06/2015 dated April 9, 2015 has issued clarification under sub-section (7) of section 186 of the Companies Act, 2013 that in cases where the effective yield (effective rate of return) on tax free bonds is greater than the prevailing yield of one year, three year, five year or ten year Government Security closest to the tenor of the loan, there is no violation of sub-section (7) of section 186 of the Companies Act, 2013.

Section 186 (7) of the Companies Act, 2013 provides that no loan shall be given under this section at a rate of interest lower than the prevailing yield of one year, three year, five year or ten year Government Security closest to the tenor of the loan.

If the company opts for tax-free bonds whose rate of interest, although less than the prevailing rate of interest of government securities, will not be in violation of section 186 (7) provided that the effective return is greater than the prevailing yield of one year, three year, five year or ten year Government Security closest to the tenor of the loan.

This clarification is similar to the clarification issued by the Ministry vide General Circular No 06/2013 dated 14.03.2013 under section 372A(3) of the Companies Act, 1956.

**Issues Involved**

In clause (b) of sub-section (11) of section 186, in the absence of provisions for exemption to a banking company or an insurance company or a housing finance company making acquisition of securities in its ordinary course of business, a difficulty arose that such companies could not make any acquisition of securities in their ordinary course of business.

**IV. Substitution of Sub-rule 3 of Rule 15 of Companies (Meetings of Board and its Powers) Second Amendment Rules, 2014 dated 14th August, 2014**

Substituted rule is read as under –

“(3) For the purposes of first proviso to sub-section (1) of section 188, except with the prior approval of the company by a special resolution, a company shall not enter into a transaction or transactions, where the transaction or transactions to be entered into, –

- (a) as contracts or arrangements with respect to clauses (a) to (e) of sub-section (1) of section 188, with criteria as mentioned below –
  - (i) sale, purchase or supply of any goods or materials, directly or through appointment of agent, exceeding ten per cent. of the turnover of the company or rupees one hundred crore, whichever is lower, as mentioned in clause (a) and clause (e) respectively of sub-section (1) of section 188;
  - (ii) selling or otherwise disposing of or buying property of any kind, directly or through appointment of agent, exceeding ten per cent. of net worth of the company or rupees one hundred crore, whichever is lower, as mentioned in clause (b) and clause (e) respectively of sub-section (1) of section 188;
  - (iii) leasing of property of any kind exceeding ten per cent. of the net worth of the company or ten per cent. of turnover of the company or rupees one hundred crore, whichever is lower, as mentioned in clause (c) of sub-section (1) of section 188;
  - (iv) availing or rendering of any services, directly or through appointment of agent, exceeding ten per cent. of the turnover of the company or rupees fifty crore, whichever is lower, as mentioned in clause (d) and clause (e) respectively of sub-section (1) of section 188:

*Explanation.* – It is hereby clarified that the limits specified in sub-clauses (i) to (iv) shall apply for

transaction or transactions to be entered into either individually or taken together with the previous transactions during a financial year.

- (b) is for appointment to any office or place of profit in the company, its subsidiary company or associate company at a monthly remuneration exceeding two and half lakh rupees as mentioned in clause (f) of subsection (1) of section 188; or
- (c) is for remuneration for underwriting the subscription of any securities or derivatives thereof, of the company exceeding one per cent. of the net worth as mentioned in clause (g) of sub-section (1) of section 188.

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

(2) In case of a wholly owned subsidiary, the special resolution passed by the holding company shall be sufficient for the purpose of entering into the transactions between the wholly owned subsidiary and the holding company.

(3) The explanatory statement to be annexed to the notice of a general meeting convened pursuant to section 101 shall contain the following particulars, namely: –

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

The substitution, more specifically, has revised the limits of contracts or arrangements with respect to clauses (a) to (e) of sub-section (1) of section 188, beyond which special resolution is required.

### **Meeting through Video Conferencing**

The sub-rule 6 of Rule 3 of the Companies (Meetings of Board and its Powers) Rules, 2014 restricted the scheduled venue of the meeting through video conferencing or audio visual means to be in India.

The Companies (Meetings of Board and its Powers) Second Amendment Rules, 2014 omitted the words and comma “, which shall be in India,”

The revised rule is read as under:

With respect to every meeting conducted through video conferencing or other audio visual means authorised under these rules, the scheduled venue of the meeting as set forth in the notice convening the meeting shall be deemed to be the place of the said meeting and all recordings of the proceedings at the meeting shall be deemed to be made at such place.

Further the rule 4 has been amended, accordingly the Audit committee meetings for consideration of financial statement including consolidated financial statement, if any, to be approved by the Board under sub-section (1) of section 134 of the Act, may not be dealt in a meeting through video conferencing or other audio visual means.

### **V. Powers exercised at the Meetings of the Board**

Rule 8 of Companies (Meetings of Board and its Powers) Rules, 2014 provided for the powers( in addition to powers mentioned in Section 179(3) which are required to be exercised by the Board of Directors by way of resolutions. For all the resolutions MGT 14 is to be filed.

Considering the burden on the corporates the Ministry of Corporate Affairs vide Companies (Meetings of Board and its Powers) Amendment Rules, 2015 dated 18th March, 2015 omitted following items from the powers to be exercised by the Board of Directors only by means of resolutions passed at meetings of the Board:

- (a) to take note of appointment(s) or removal(s) of one level below the Key Management Personnel;
- (b) to take note of the disclosure of director's interest and shareholding;
- (c) to buy, sell investments held by the company (other than trade investments), constituting five percent or more of the paid up share capital and free reserves of the investee company;
- (d) to invite or accept or renew public deposits and related matters;
- (e) to review or change the terms and conditions of public deposit;
- (f) to approve quarterly, half yearly and annual financial statements or financial results as the case may be.

**Revised Rule 8 is read as under:**

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

- (1) to make political contributions;
- (2) to appoint or remove key managerial personnel (KMP);
- (3) to appoint internal auditors and secretarial auditor.

**VI. RoD issued**

Ministry of Corporate Affairs, after considering the difficulty faced by the banking/insurance/housing finance companies in making acquisition of securities in ordinary course of business, vide Companies (Removal of Difficulties) Order, 2015 dated 13th February, 2015, inserted item (iv) in clause (b) of sub-section (11) of section 186 of the Companies Act, 2013.

The inserted provision exempts banking company or an insurance company or a housing finance company, making acquisition of securities in the ordinary course of its business from the applicability of provisions of section 186 of the Act.

The revised section reads thus:

(11) Nothing contained in this section, except sub-section (1), shall apply –

- (a) to a loan made, guarantee given or security provided by a banking company or an insurance company or a housing finance company in the ordinary course of its business or a company engaged in the business of financing of companies or of providing infrastructural facilities;
- (b) to any acquisition–
  - (i) made by a non-banking financial company registered under Chapter IIIB of the Reserve Bank of India Act, 1934 and whose principal business is acquisition of securities:  
 Provided that exemption to non-banking financial company shall be in respect of its investment and lending activities;
  - (ii) made by a company whose principal business is the acquisition of securities;

(iii) of shares allotted in pursuance of clause (a) of sub-section (1) of section 62.

(iv) *made by a banking company or an insurance company or a housing finance company, making acquisition of securities in the ordinary course of its business.*

## **VII. Companies (Meetings of Board and its Powers) Second Amendment Rules, 2015**

After Rule 6 the following rule has been inserted.

'6A. omnibus approval for related party transaction as on annual basis.- All related party transactions shall require approval of the Audit Committee and the Audit Committee may make omnibus approval for related party transactions proposed to be entered into by the company subject to the following conditions, namely:-

- (1) The Audit Committee shall, after obtaining approval of the Board of Directors, specify the criteria for making the omnibus approval which shall include the following, namely:-
  - (a) maximum value of the transactions, in aggregate, which can be allowed under the omnibus route in a year;
  - (b) the maximum value per transaction which can be allowed
  - (c) extent and manner of disclosures to be made to the Audit the time of seeking omnibus approval;
  - (d) review, at such intervals as the Audit Committee may deem lit, transaction entered into by the company pursuant to each of to the omnibus approval made
  - (e) transactions which cannot be subject to the omnibus approval by the Audit Committee.
- (2) The Audit Committee shall consider the following factors while specifying the criteria for making omnibus approval, namely: -
  - (a) repetitiveness of the transactions (in past or in future);
  - (b) justification for the need of omnibus approval.
- (3) The Audit Committee shall satisfy itself on the need for omnibus approval for transactions of repetitive nature and that such approval is in the interest of the company.
- (4) The omnibus approval shall contain or indicate the following: -
  - (a) name of the related parties;
  - (b) nature and duration of the transaction;
  - (c) maximum amount of transaction that can be entered into;
  - (d) the indicative base price or current contracted price and the formula for variation in the price, if any; and
  - (e) any other information relevant or important for the Audit Committee to take a decision on the proposed transaction:

Provided that where the need for related party transaction cannot be foreseen and aforesaid details are not available, audit committee may make omnibus approval for such transactions subject to their value not exceeding rupees one crore per transaction
- (5) Omnibus approval shall be valid for a period not exceeding one financial year and shall require fresh approval after the expiry of such financial year.



(6) Omnibus approval shall not be made for transactions in respect of selling or disposing of the undertaking of the company.

– Rule 10 has been omitted

– In rule 15, in sub-rule (3) , for the words “Special Resolution”, has been substituted with the word “resolution”. The following amended rule read as under –

“(3) For the purposes of first proviso to sub-section (1) of section 188, except with the prior approval of the company by a “ resolution”, a company shall not enter into a transaction or transactions, where the transaction or transactions to be entered into, –

(a) as contracts or arrangements with respect to clauses (a) to (e) of sub-section (1) of section 188, with criteria as mentioned below –

(i) sale, purchase or supply of any goods or materials, directly or through appointment of agent, exceeding ten per cent. of the turnover of the company or rupees one hundred crore, whichever is lower, as mentioned in clause(a) and clause (e) respectively of sub-section (1) of section 188;

(ii) selling or otherwise disposing of or buying property of any kind, directly or through appointment of agent, exceeding ten per cent. of net worth of the company or rupees one hundred crore, whichever is lower, as mentioned in clause (b) and clause (e) respectively of sub-section (1) of section 188;

(iii) leasing of property of any kind exceeding ten per cent. of the net worth of the company or ten per cent. of turnover of the company or rupees one hundred crore, whichever is lower, as mentioned in clause (c) of sub-section (1) of section 188;

(iv) availing or rendering of any services, directly or through appointment of agent, exceeding ten per cent. of the turnover of the company or rupees fifty crore, whichever is lower, as mentioned in clause (d) and clause (e) respectively of sub-section (1) of section 188:

*Explanation.*– It is hereby clarified that the limits specified in sub-clauses (i) to (iv) shall apply for transaction or transactions to be entered into either individually or taken together with the previous transactions during a financial year.

(b) is for appointment to any office or place of profit in the company, its subsidiary company or associate company at a monthly remuneration exceeding two and half lakh rupees as mentioned in clause (f) of subsection (1) of section 188; or

(c) is for remuneration for underwriting the subscription of any securities or derivatives thereof, of the company exceeding one per cent. of the net worth as mentioned in clause (g) of sub-section (1) of section 188.

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

(2) In case of a wholly owned subsidiary, the special resolution passed by the holding company shall be sufficient for the purpose of entering into the transactions between the wholly owned subsidiary and the holding company.

(3) The explanatory statement to be annexed to the notice of a general meeting convened pursuant to section 101 shall contain the following particulars, namely :–

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

The text of the Circulars issued under this Chapter appended as under:

1

**General Circular No. 30/2014**

**No. 1/32/2013-CL-V(Pt)**

**GOVERNMENT OF INDIA**

**MINISTRY OF CORPORATE AFFAIRS**

5th Floor, A Wing Shastri Bhavan  
Dr R.P. Road, New Delhi

Dated: 17th July 2014

To

All Regional Directors

All Registrars of Companies

All Stakeholders

**Subject: Clarifications on matters relating to Related Party Transactions.**

Sir,

Government has received representations from stakeholders seeking certain clarifications on related party transactions covered under section 188 of the Companies Act, 2013. These representations have been examined and the following clarifications are given:-

1. *Scope of second proviso to Section 188(1)*:- Second proviso to sub-section (1) of section 188 requires that no member of the company shall vote on a special resolution to approve the contract or arrangement (referred to in the first proviso), if such a member is a related party. It is clarified that 'related party' referred to in the second proviso has to be construed with reference only to the contract or arrangement for which the said special resolution is being passed. Thus, the term 'related party' in the above context refers only to such related party as may be a related party in the context of the contract or arrangement for which the said special resolution is being passed.
2. *Applicability of Section 188 to corporate restructuring, amalgamations etc.* :- It is clarified that transactions arising out of Compromises, Arrangements and Amalgamations dealt with under specific provisions of the Companies Act, 1956/Companies Act, 2013, will not attract the requirements of section 188 of the Companies Act, 2013.
3. *Requirement of fresh approvals for past contracts under Section 188.* :- Contracts entered into by companies, after making necessary compliances under Section 297 of the Companies Act, 1956, which already came into effect before the commencement of Section 188 of the Companies Act, 2013, will not require fresh

approval under the said section 188 till the expiry of the original term of such contracts. Thus, if any modification in such contract is made on or after 1st April, 2014, the requirements under section 188 will have to be complied with.

4. This issues with approval of the competent authority.

Yours faithfully

Sd/-

**(KMS Narayanan)**

*Assistant Director (Policy)*

Ph: 23387263

*Copy To:-*

1. e-Governance Section and web contents Officer to place this circular on the Ministry website.
2. Guard File

**2****General Circular No. 04/2015****No. 1/32/2013-CL.V****Government of India****MINISTRY OF CORPORATE AFFAIRS**5th floor, 'A' wing, Shastri Bhavan  
New Delhi - 110001

Dated: 10/03/2015

To

All Regional Directors,

All Registrar of Companies,

All Stakeholders.

**Subject : Clarification with regard to section 185 and 186 of the Companies Act, 2013 - loans and advances to employees - reg.**

Sir,

1. This Ministry has received a number of references seeking clarification on the applicability of provisions of section 186 of the Companies Act, 2013 relating to grant of loans and advances by Companies to their employees.
2. The issue has been examined and it is hereby clarified that loans and/or advances made by the companies to their employees, other than the managing or whole time directors (which is governed by section 185) are not governed by the requirements of section 186 of the Companies Act, 2013. This clarification will, however, be applicable if such loans/advances to employees are in accordance with the conditions of service applicable to employees and are also in accordance with the remuneration policy, in cases where such policy is required to be formulated.
3. This issues with the approval of the Secretary.

Yours faithfully,

**(K.M.S. Narayanan)**  
*Assistant Director*

Phone: 011-23387263

*Copy to :*

1. PSO to Secretary
2. PS to JS(M)/JS(B)/JS(A)JS(SP)/DII(NS)/DII(P)
3. E-Gov Cell for uploading on the MCA website
4. Guard File.

**3****General Circular No. 06/2015****File No. 5/3/ 13-CL.V****Government of India****MINISTRY OF CORPORATE AFFAIRS**5th floor, 'A' wing, Shastri Bhavan  
Dr. R P Road, New Delhi.

Dated 9th April, 2015

To

All Regional Directors,  
All Registrar of Companies,  
All Stakeholders**Subject : Clarification under sub-section (7) of section 186 of the Companies Act, 2013**

Sir,

1. Attention of this Ministry has been drawn to General Circular No 06/2013 dated 14.03.2013 vide which it was clarified that in cases where the effective yield (effective rate of return) on tax free bonds is greater than the yield on prevailing bank rate, there was no violation of Section 372A(3) of Companies Act, 1956. Stakeholders have requested for similar clarification w.r.t. corresponding section 186(7) of the Companies Act, 2013.

2. The matter has been examined in the Ministry and it is hereby clarified that in cases where the effective yield (effective rate of return) on tax free bonds is greater than the prevailing yield of one year, three year, five year or ten year Government Security closest to the tenor of the loan, there is no violation of sub-section (7) of section 186 of the Companies Act, 2013.

3. This issues with the approval of competent authority.

Yours faithfully,

**(K.M.S Narayanan)***Assistant Director*

Phone 23387263

Copy to :

1. All concerned
2. PS to CAM
3. PS to Secretary
4. PS to A.S.
5. PS to Joint Secretaries
6. E-Governance Cell for uploading this Circular in MCA 21.

## 4

## MINISTRY OF CORPORATE AFFAIRS

## NOTIFICATION

New Delhi, the 14th August, 2014

**G.S.R. 590(E).**— In exercise of the powers conferred under sections 173, 175, 177, 178, 179, 184, 185, 186, 187, 188, 189 and section 191 read with section 469 of the Companies Act, 2013 (18 of 2013), the Central Government hereby makes the following rules to amend the Companies (Meetings of Board and its Powers) Rules, 2014, namely:—

1. (1) These rules may be called the Companies (Meetings of Board and its Powers) Second Amendment Rules, 2014.

(2) They shall come into force on the date of their publication in the Official Gazette.

2. In the Companies (Meetings of Board and its Powers) Rules, 2014, -

(1) in rule 3, in sub-rule (6), the words and commas “,which shall be in India,” shall be omitted.

(2) in rule 4, -

(a) in sub-rule (1), for the brackets, figure and word “(1) The”, the word “The” shall be substituted;

(b) in clause (iv), for the words “consideration of accounts”, the words “consideration of financial statement including consolidated financial statement, if any, to be approved by the Board under sub-section (1) of section 134 of the Act” shall be substituted.

(3) in rule 15, for sub-rule (3), the following sub-rule shall be substituted, namely:—

“(3) For the purposes of first proviso to sub-section (1) of section 188, except with the prior approval of the company by a special resolution, a company shall not enter into a transaction or transactions, where the transaction or transactions to be entered into,—

(a) as contracts or arrangements with respect to clauses (a) to (e) of sub-section (1) of section 188, with criteria as mentioned below -

(i) sale, purchase or supply of any goods or materials, directly or through appointment of agent, exceeding ten per cent. of the turnover of the company or rupees one hundred crore, whichever is lower, as mentioned in clause (a) and clause (e) respectively of sub-section (1) of section 188;

(ii) selling or otherwise disposing of or buying property of any kind, directly or through appointment of agent, exceeding ten per cent. of net worth of the company or rupees one hundred crore, whichever is lower, as mentioned in clause (b) and clause (e) respectively of sub-section (1) of section 188;

(iii) leasing of property of any kind exceeding ten per cent. of the net worth of the company or ten per cent. of turnover of the company or rupees one hundred crore, whichever is lower, as mentioned in clause (c) of sub-section (1) of section 188;

- (iv) availing or rendering of any services, directly or through appointment of agent, exceeding ten per cent. of the turnover of the company or rupees fifty crore, whichever is lower, as mentioned in clause (d) and clause (e) respectively of sub-section (1) of section 188:

*Explanation.*—It is hereby clarified that the limits specified in sub-clauses (i) to (iv) shall apply for transaction or transactions to be entered into either individually or taken together with the previous transactions during a financial year.

- (b) is for appointment to any office or place of profit in the company, its subsidiary company or associate company at a monthly remuneration exceeding two and half lakh rupees as mentioned in clause (f) of subsection (1) of section 188; or
- (c) is for remuneration for underwriting the subscription of any securities or derivatives thereof, of the company exceeding one per cent. of the net worth as mentioned in clause (g) of sub-section (1) of section 188.

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

- (2) In case of a wholly owned subsidiary, the special resolution passed by the holding company shall be sufficient for the purpose of entering into the transactions between the wholly owned subsidiary and the holding company.
- (3) The explanatory statement to be annexed to the notice of a general meeting convened pursuant to section 101 shall contain the following particulars, namely:—
- (a) name of the related party ;
- (b) name of the director or key managerial personnel who is related, if any;
- (c) nature of relationship;
- (d) nature, material terms, monetary value and particulars of the contract or arrangement;
- (e) any other information relevant or important for the members to take a decision on the proposed resolution.”

[F. No. 1/32/2013-CL-V-Part]

**AMARDEEP SINGH BHATIA**

Jt. Secy.

*Note :* The principal notification was published in the Gazette of India vide No. GSR 240 (E), dated 31.05.2014 and was amended vide notification number GSR 398 (E), dated 12.06.2014.



**5**

**GOVERNMENT OF INDIA**  
**MINISTRY OF CORPORATE AFFAIRS**  
**NOTIFICATION**

New Delhi, the 18th March, 2015

**G.S.R. 206(E).** - In exercise of the powers conferred under sections 173, 175, 117, 178, 179, 184, 185, 186, 187, 188, 189 and section 191 read with section 469 of the Companies Act, 2013 (18 of 2013), the Central Government hereby makes the following rules further to amend the Companies (Meetings of Board and its Powers) Rules, 2014, namely:-

- I. (1) These rules may be called the Companies (Meetings of Board and its Powers) Amendment Rules, 2015.
- (2) They shall come into force on the date of their publication in the Official Gazette.
2. In the Companies (Meetings of Board and its Powers) Rules, 2014,
  - (a) in rule 8,
    - (i) item numbers (3), (5), (6), (7), (8) and (9) and the entries relating thereto shall be omitted;
  - (b) in rule 10, in the proviso, for the word 'principle' the word 'principal' shall be substituted.

[F. No. 1/32/2013-CL-V-Part]

**AMARDEEP SINGH BHATIA**  
*Jt. Secy.*

**Note.** - The principal rules were published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) *vide* number G.S.R. 240(E), dated the 31st March, 2014 and was subsequently amended *vide* notification number G.S.R. 398(E), dated the 12th June, 2014 and number G.S.R. 590(E), dated the 14th August, 2014.

## 6

## MINISTRY OF CORPORATE AFFAIRS

## ORDER

New Delhi, the 13th February, 2015

**S.O. 504(E).**—Whereas, the Companies Act, 2013 (18 of 2013) (hereinafter referred to as the said Act) received the assent of the President on the 29th August, 2013;

And whereas, clause (85) of section 2 of the said Act provides for definition of the term “small company”;

And whereas, clause (b) of sub-section (11) of section 186 of the said Act provides that the requirements of provisions of section 186 [except sub-section (1) of the said section] shall not apply to any acquisition made by a non-banking financial company registered under Chapter IIIB of the Reserve Bank of India Act, 1934 (2 of 1934) and any other company whose principal business is acquisition of securities;

And whereas, such provisions of clause (85) of section 2 and section 186 of the said Act had come into force on the 1st day of April, 2014;

And whereas, the following difficulties have arisen in giving effect to the above provisions of the said Act:—

- (a) According to clause (85) of section 2, a company may be treated as a ‘small company’ if it meets either of the conditions provided therein thereby making the second limit unrestricted or inconsequential. Difficulties have arisen in this regard as companies which, though, meet one of the criteria but exceed the monetary limit in respect of second criteria excessively are also getting classified as ‘small companies’; and
- (b) in clause (b) of sub-section (11) of section 186, in the absence of provisions for exemption to a banking company or an insurance company or a housing finance company making acquisition of securities in its ordinary course of business, a difficulty has arisen that such companies cannot make any acquisition of securities in their ordinary course of business;

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 470 of the Companies Act, 2013 (18 of 2013), the Central Government hereby makes the following Order to remove the aforesaid difficulties, namely:-

(1) Short title and commencement.—

- (1) This Order may be called the Companies (Removal of Difficulties) Order, 2015.
- (2) It shall come into force on the date of its publication in the Official Gazette.

(2) In the Companies Act, 2013 (hereinafter referred to as the said Act),—

- (a) in section 2, in clause (85), in sub-clause (i), for the word “or” occurring at the end, the word “and” shall be substituted; and
- (b) in section 186 of the said Act, in sub-section (11), in clause (b), after item (iii), the following item shall be inserted, namely :—

“(iv) made by a banking company or an insurance company or a housing finance company, making acquisition of securities in the ordinary course of its business.”.

[F. No. 1/13/2013-CL.V-Part

**AMARDEEP SINGH BHATIA**

*Jt. Secy.*

**7****MINISTRY OF CORPORATE AFFAIRS****NOTIFICATION****New Delhi, the 14th December, 2015**

G.S.R. 971(E).— In exercise of the powers conferred under sections 173, 175, 177, 178, 179, 184, 185, 186, 187, 188, 189 and section 191 read with section 469 of the Companies Act, 2013 (18 of 2013), the Central Government hereby makes the following rules further to amend the Companies (Meetings of Board and its Powers) Rules, 2014, namely:—

1. (1) These rules may be called the Companies (Meetings of Board and its Powers) Second Amendment Rules, 2015. (2) They shall come into force on the date of their publication in the Official Gazette.

2. In the Companies (Meetings of Board and its Powers) Rules, 2014, -

(i) After rule 6, the following rule shall be inserted, namely:-

“6A. Omnibus approval for related party transactions on annual basis.- All related party transactions shall require approval of the Audit Committee and the Audit Committee may make omnibus approval for related party transactions proposed to be entered into by the company subject to the following conditions, namely:-

- (1) The Audit Committee shall, after obtaining approval of the Board of Directors, specify the criteria for making the omnibus approval which shall include the following, namely:-
  - (a) maximum value of the transactions, in aggregate, which can be allowed under the omnibus route in a year;
  - (b) the maximum value per transaction which can be allowed;
  - (c) extent and manner of disclosures to be made to the Audit Committee at the time of seeking omnibus approval;
  - (d) review, at such intervals as the Audit Committee may deem fit, related party transaction entered into by the company pursuant to each of the omnibus approval made;
  - (e) transactions which cannot be subject to the omnibus approval by the Audit Committee.
- (2) The Audit Committee shall consider the following factors while specifying the criteria for making omnibus approval, namely: -
  - (a) repetitiveness of the transactions (in past or in future);
  - (b) justification for the need of omnibus approval.
- (3) The Audit Committee shall satisfy itself on the need for omnibus approval for transactions of repetitive nature and that such approval is in the interest of the company.
- (4) The omnibus approval shall contain or indicate the following: -

- (a) name of the related parties;
- (b) nature and duration of the transaction;
- (c) maximum amount of transaction that can be entered into;
- (d) the indicative base price or current contracted price and the formula for variation in the price, if any;  
and
- (e) any other information relevant or important for the Audit Committee to take a decision on the proposed transaction:

Provided that where the need for related party transaction cannot be foreseen and aforesaid details are not available, audit committee may make omnibus approval for such transactions subject to their value not exceeding rupees one crore per transaction.

- (5) Omnibus approval shall be valid for a period not exceeding one financial year and shall require fresh approval after the expiry of such financial year.
  - (6) Omnibus approval shall not be made for transactions in respect of selling or disposing of the undertaking of the company.
  - (7) Any other conditions as the Audit Committee may deem fit.”.
- (ii) Rule 10 shall be omitted;
  - (iii) In rule 15, in sub-rule (3), for the words “special resolution”, wherever they occur, the word “resolution” shall be substituted.

**[F. No. 1/32/2013-CL-V-Part]**

**AMARDEEP SINGH BHATIA, Jt. Secy.**

**Note:** The principal rules were published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), *vide* number G.S.R. 240(E), dated the 31st March, 2014 and was subsequently amended *vide* notification number G.S.R. 398(E), dated the 12th June, 2014, number G.S.R. 590(E), dated the 14th August, 2014 and number G.S.R. 206(E), dated the 18th March, 2015.

# Chapter XIII

## APPOINTMENT AND REMUNERATION OF MANAGERIAL PERSONNEL

### Amendment Rules and Notification issued by the Ministry under this Chapter :

Sl. No.	Particulars	Impact on Lesson of ACLP
1.	Notification S. O. 1913(E) dated 25th July, 2014.	Lesson 8 Key Managerial Personnel
2.	General Circular No. 07/2015 dated 10th April, 2015. (Refer Schedule V)	Lesson 8 Key Managerial Personnel

### I. Appointment of Chief Executive Officer

Section 203(1) reads as under

- (1) Every company belonging to such class or classes of companies as may be prescribed shall have the 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 :

Provided that an individual shall not be appointed or reappointed as the chairperson of the company, in pursuance of the articles of the company, as well as the managing director or Chief Executive Officer of the company at the same time after the date of commencement of this Act unless,—

- (a) the articles of such a company provide otherwise; or
- (b) the company does not carry multiple businesses:

Provided further that nothing contained in the first proviso shall apply to 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.

*The Ministry vide its notified dated July 25, 2014 has stated that in exercise of the powers conferred by the second proviso to sub-section (1) of section 203 of the Companies Act, 2013 (18 of 2013), the Central Government hereby notifies that public companies having paid-up share capital of rupees one hundred crore or more and annual turnover of rupees one thousand crore or more which are engaged in multiple businesses and have appointed Chief Executive Officer for each such business shall be the class of companies for the purposes of the second proviso to sub-section (1) of section 203 of the said Act.*

Explanation. - For the purposes of this notification, the paid-up share capital and the annual turnover shall be decided on the basis of the latest audited balance sheet.

The text of the Amendment Rules and Notification issued under this Chapter appended as under:

1

**NOTIFICATION**

New Delhi, the 25th July, 2014

**S. O. 1913(E).**—In exercise of the powers conferred by the second proviso to sub-section (1) of Section 203 of the Companies Act, 2013 (18 of 2013), the Central Government hereby notifies that public companies having paid-up share capital of rupees one hundred crore or more and annual turnover of rupees one thousand crore or more which are engaged in multiple businesses and have appointed Chief Executive Officer for each such business shall be the class of companies for the purposes of the second proviso to sub-section (1) of Section 203 of the said Act.

Explanation.—for the purposes of this notification, the paid-up share capital and the annual turnover shall be decided on the basis of the latest audited balance sheet.

[F. No. 1/5/2013 CL-V]

**AMARDEEP SINGH BHATIA,**  
*Jt. Secy.*

# Chapter XIV

## INSPECTION, INQUIRY AND INVESTIGATION

This Chapter broadly covers (Section 206 -229) inspection, inquiry and investigation, covering aspects such as Power to call for information, inspect books and conduct inquiries, Conduct of inspection and inquiry, Report on inspection made, Search and seizure, Investigation into affairs of company, Establishment of Serious Fraud Investigation Office, Investigation into affairs of company by Serious Fraud Investigation Office, Investigation of ownership of company, Procedure, powers, etc., of inspectors Seizure of documents by inspector, Freezing of assets of company on inquiry and investigation,, Investigation, etc., of foreign companies etc.

***The Ministry has not issued any Circulars, Clarifications,  
Notification and Amendment Rules in this regard.***

# Chapter XV

## COMPROMISES, ARRANGEMENT AND AMALGAMATION

This Chapter broadly covers (Section 230 -240) compromise, arrangement and amalgamations, such as Power to compromise or make arrangements with creditors and members, Power of Tribunal to enforce compromise or arrangement, Merger and amalgamation of companies, Merger or amalgamation of company with foreign company,. Power to acquire shares of shareholders dissenting from scheme or contract approved by majority, Purchase of minority shareholding, Power of Central Government to provide for amalgamation of companies in public interest, Registration of offer of schemes involving transfer of shares, Preservation of books and papers of amalgamated companies, Liability of officers in respect of offences committed prior to merger, amalgamation, etc.

This chapter is yet to be notified.

***This chapter is yet to be notified.***



# Chapter XVI

## PREVENTION OF OPPRESSION AND MISMANAGEMENT

This Chapter broadly covers (Section 241-246) prevention of oppression and mismanagement, such as Application to Tribunal for relief in cases of oppression, etc., Powers of Tribunal, Class action.

***This chapter is yet to be notified.***

# Chapter XVII

## REGISTERED VALUERS

This Chapter broadly covers (Section 247) Valuation by registered valuers.

*This chapter is yet to be notified.*

# Chapter XVIII

## REMOVAL OF NAMES OF COMPANIES FROM THE REGISTER OF COMPANIES

This Chapter broadly covers (Section 248- 252) removal name of company from register of Companies such as Power of Registrar to remove name of company from register of Companies, Effect of company notified as dissolved, Fraudulent application for removal of name, Appeal to Tribunal etc.

*This chapter is yet to be notified*

# Chapter XIX

## REVIVAL AND REHABILITATION OF SICK COMPANIES

This Chapter broadly covers (Section 253- 269) determination of sickness, Application for revival and rehabilitation, Exclusion of certain time in computing period of limitation, Appointment of interim administrator, Committee of creditors, Order of Tribunal, Appointment of administrator, Powers and duties of company administrator, Scheme of revival and rehabilitation, Sanction of scheme, Scheme to be binding, Implementation of scheme, Winding up of company on report of company administrator, Power of Tribunal to assess damages against delinquent directors, etc. Rehabilitation and Insolvency Fund.

*This chapter is yet to be notified*

# Chapter XX

## WINDING UP

This Chapter broadly covers (Section 270-365) winding up of companies such as Modes of winding up, Circumstances in which company may be wound up by Tribunal, Petition for winding up, Powers of Tribunal, Directions for filing statement of affairs, Company Liquidators and their appointments, Removal and replacement of liquidator, Intimation to Company Liquidator, provisional liquidator and Registrar, Effect of winding up order, Stay of suits, etc., on winding up order, Power of Tribunal on application for stay of winding up, Powers and duties of Company Liquidator, Provision for professional assistance to Company Liquidator, Books to be kept by Company Liquidator, Audit of Company Liquidator's accounts, Adjustment of rights of contributories, Power to summon persons suspected of having property of company, etc., Power to order examination of promoters, directors, etc., Dissolution of company by Tribunal, Circumstances in which company may be wound up voluntarily, Declaration of solvency in case of proposal to wind up voluntarily, Meeting of creditors, Commencement of voluntary winding up, Effect of voluntary winding up, Appointment of committees, Distribution of property of company, Overriding preferential payments, Preferential payments, Fraudulent preference, Sale of assets and recovery of debts due to company, Settlement of claims of creditors by Official Liquidator, Appeal by creditor, Order of dissolution of company etc .

***This chapter is yet to be notified***

# Chapter XXI

## PART I - COMPANIES AUTHORISED TO REGISTER UNDER THIS ACT

## PART II- WINDING UP OF UNREGISTERED COMPANIES

This Chapter broadly covers (Sections 366-378) Companies authorised to register under this Act and Section (375-378) Winding up of unregistered companies.

***The ministry has not issued any Circulars, Clarifications, Notification and Amendment Rules in this regard.***

# Chapter XXII

## COMPANIES INCORPORATED OUTSIDE INDIA

This Chapter broadly covers (Section 379 - 393) application of Act to foreign companies, Documents, etc., to be delivered to Registrar by foreign companies, Accounts of foreign company, Display of name, etc., of foreign company, Service on foreign company, Offer of Indian Depository Receipts etc.

***The ministry has not issued any Circulars, Clarifications, Notification and Amendment Rules in this regard.***

# Chapter XXIII

## GOVERNMENT COMPANIES

This Chapter broadly covers (Section 394-395)

Annual reports on Government companies.

Annual reports where one or more State Governments are members of companies.

MCA vide Notification No. GSR 463(E) dated 5th June, 2015 has provided various exemptions to Government Companies. Students are advised to see page No. 198 for the same.



# Chapter XXIV

## REGISTRATION OF OFFICES AND FEES

**Amendment Rules and Notification issued by the Ministry under this chapter, so far :**

Sl. No.	Particular	Impact on Lesson of ACLP
1.	Companies (Registration Offices and Fees) Amendment Rules, 2015 dated 24th February, 2015.	Lesson 16 E-filing
2.	Companies (Registration Offices and Fees) Second Amendment Rules, 2015 dated 29th May, 2015.	Lesson 14 Charges

### **I. The Companies (Registration Offices and Fees) Amendment Rules, 24th February, 2015**

Insertion of Sub-rule (7) in Rule 10

Sub-rule (7) inserts Form No. GNL-4 for any further information or documents called for, in respect of application or e-form or document, filed electronically with the Ministry of Corporate Affairs.

The inserted rule reads thus:

“7. Any further information or documents called for, in respect of application or e-form or document, filed electronically with the Ministry of Corporate Affairs shall be furnished in Form No. GNL-4 as an addendum”

### **II. Restriction on Public Inspection of Board Resolutions filed with Registrar of Companies**

In rule 15 of Companies (Registration offices and Fees) Rules, 2014, the following proviso has been inserted:

“Provided that no person shall be entitled under section 399 to inspect or to obtain copies of resolution referred to in clause (g) of Sub section (3) of Section 117 of the Act.

Amended Rule shall be read as under:

- (a) inspect any document kept by the Registrar, being documents filed or registered by him in pursuance of this Act or the Companies Act, 1956 (1 of 1956) or making a record of any fact required or authorised to be recorded or registered in pursuance of this Act, on payment for each Inspection of fee.

- (b) require a certificate of incorporation of any company, or a copy or extract of any other document or any part of any other document to be certified by the Registrar, on payment of fee.

Provided that no person shall be entitled under section 399 to inspect or to obtain copies of resolution referred to in clause (g) of Sub section (3) of Section 117 of the Act.

**The text of the Circulars and Amendment Rules issued under this Chapter appended as under:**

## MINISTRY OF CORPORATE AFFAIRS

### NOTIFICATION

New Delhi, the 24th February, 2015

**G.S.R. 122(E).** – In exercise of the powers conferred by Sections 396, 398, 399, 403, and section 404, read with sub-sections (1) and (2) of Section 469 of the Companies Act, 2013 (18 of 2013), the Central Government hereby makes the following rules further to amend the Companies (Registration Offices and Fees) Rules, 2014, namely:—

1. (1) These rules may be called the Companies (Registration Offices and Fees) Amendment Rules, 2015.  
(2) In the Companies (Registration Offices and Fees) Rules, 2014,—

- (a) in rule 10, after sub-rule (6), the following sub-rule shall be inserted, namely:—

“7. Any further information or documents called for, in respect of application or e-form or document, filed electronically with the Ministry of Corporate Affairs shall be furnished in Form No. GNL-4 as an addendum”

- (b) in the Annexure, after Form No. GNL-3, the following Form shall be inserted, namely:—

Form No. GNL 4 may be viewed at [mca.gov.in](http://mca.gov.in)

[F. No. 01/16/2013-CL-V (Part-I)]

**AMARDEEP SINGH BHATIA**

*Jt. Secy.*

**Note:**— The principal rules were published in the Gazette of India, Extraordinary, Part-II, Section 3, Sub-section (i), *vide* number. G.S.R. 268(E), dated the 31st March, 2014 and was last amended by notification *vide* number G.S.R 297(E), dated the 28th April, 2014.

**2**

**Government of India**

**Ministry of Corporate Affairs**

**Notification**

New Delhi Dated the 29th May, 2015

**G.S.R.**— In exercise of the powers conferred by section 399 read with sub-sections (1) and (2) of section 469 of the Companies Act, 2013 (18 of 2013), the Central Government hereby makes the following rules further to amend the Companies (Registration Offices and Fees) Rules, 2014, namely:—

1. (1) These rules may be called the Companies (Registration Offices and Fees) Second Amendment Rules, 2015.

(2) They shall come into force from the date of their publication in the Official Gazette.

2. In the Companies (Registration Offices and Fees) Rules, 2014, in rule 15, the following proviso shall be inserted:

“Provided that no person shall be entitled under section 399 to inspect or obtain copies of resolutions referred to in clause (g) of sub-section (3) of section 117 of the Act.”

[File No. 1/16/2013-CL-V]

**(Amardeep Singh Bhatia)**

*Joint Secretary to the Government of India*

# Chapter XXV

## COMPANIES TO FURNISH INFORMATION

This Chapter deals with companies to furnish information or statistics contain section 405 i.e..

Section 405. Power of Central Government to direct companies to furnish information or statistics.

***The Ministry has not issued any Circulars, Clarifications, Notification and Amendment Rules in this regard.***

# Chapter XXVI

## NIDHIS

This Chapter deals with nidhi company.

The Nidhi Rules, 2014 have been notified by the Ministry vide notification No. G.S.R. 258(E) dated 31st March, 2014. The rules broadly covers the procedural aspects of incorporation of Nidhi Companies restrictions or prohibitions on nidhi companies, auditing, deposits acceptance by their companies. Detailed rules are available on [mca.gov.in](http://mca.gov.in).

MCA vide Notification No. GSR 465(E) dated 5th June, 2015 has provided various exemptions to Nidhi companies. Students are advised to see page 212 for the same.

# Chapter XXVII

## NATIONAL COMPANY LAW TRIBUNAL AND APPELLATE TRIBUNAL

This Chapter deals with Constitution and other related matters of National Company Law Tribunal and Appellate Tribunal (Section 407 to 434).

***Recently, Supreme Court in its judgement dated 14th May, 2015 upheld the constitutional validity of National Company Law Tribunal and Appellate Tribunal***

# Chapter XXVIII

## SPECIAL COURTS

This chapter deals with Special Court (section 435 to 446) covering aspects such as Establishment of Special Courts, Offences triable by Special Courts, Appeal and revision, Application of Code to proceedings before Special Court, Offences to be non-cognizable.

***This chapter is yet to be notified.***

# Chapter XXIX

## THE COMPANIES (AMENDMENT) ACT, 2015

The Central Government in exercise of the powers conferred by sub-section (2) of Section 1 of the Companies (Amendment) Act, 2015 (21 of 2015), the Ministry of Corporate Affairs vide Notification No. S.O. 1440(E) dated 29th May, 2015 notified sections 1 to 12 and 15 to 23 of the said Act.

The following sections of the Companies Act, 2013 "**Principal Act**", after amendment wide Companies (Amendment) Act, 2015 shall be read as under:

### **Section 2(68): Private Company**

The amended Section 2(68) shall be read as under:

"private company" means a company having a minimum paid-up share capital as may be prescribed, and which by its articles,—

- (i) restricts the right to transfer its shares;
- (ii) except in case of One Person Company, limits the number of its members to two hundred:

Provided that where two or more persons hold one or more shares in a company jointly, they shall, for the purposes of this clause, be treated as a single member:

Provided further that—

- (A) persons who are in the employment of the company; and
- (B) persons who, having been formerly in the employment of the company, were members of the company while in that employment and have continued to be members after the employment ceased, shall not be included in the number of members; and

- (iii) prohibits any invitation to the public to subscribe for any securities of the company;

*Effect of this Amendment:*

In order to stimulate the ease of doing business the threshold limit for minimum capital required of one lakh rupees or such higher paid-up share capital for formation of private company has been diluted.

### **Section 2(71): Public Company**

The amended Section 2(71) shall be read as under:

"public company" means a company which—

- (a) is not a private company;
- (b) has a minimum paid-up share capital as may be prescribed:

Provided that a company which is a subsidiary of a company, not being a private company, shall be deemed



to be public company for the purposes of this Act even where such subsidiary company continues to be a private company in its articles ;

*Effect of this Amendment:*

In order to stimulate the ease of doing business the threshold limit for minimum capital required of five lakh rupees or such higher paid-up share capital for formation of Public company has been diluted.

**Section 9: Effect of Registration**

The Amended Section 9 shall be read as under:

“From the date of incorporation mentioned in the certificate of incorporation, such subscribers to the memorandum and all other persons, as may, from time to time, become members of the company, shall be a body corporate by the name contained in the memorandum, capable of exercising all the functions of an incorporated company under this Act and having perpetual succession with power to acquire, hold and dispose of property, both movable and immovable, tangible and intangible, to contract and to sue and be sued, by the said name”.

*Effect of this Amendment*

The mandatory requirement of common seal has been done away with and its optional to have a common seal of the company.

Accordingly Section 12, 22 (2) & (3), 46 and 223 of the Act also amended.

**Section 11: Commencement of Business**

Section 11 relating to commencement of business has been omitted.

*Effect of this Amendment*

By omitting this section, the filing requirement of declaration and verification as prescribed in the principal act has been done away.

Now, companies can commence business and exercise their borrowing power immediately after getting registration with the Registrar.

Subsequent to this amendment Section 11 of the Companies Act, 2013, Rule 24 of Companies (Incorporation) Rules, 2014 and e-form INC-21 will be of no effect.

**Section 12: Registered office of the Company**

The Amended Section 12 (3) (b) shall be read as under :

“(b) have its name engraved in legible characters on its seal, if any;”.

*Effect of this Amendment*

The mandatory requirement of having name engraved in legible character on the common seal has been done away with since its optional to have a common seal of the company.

**Section 22: Execution of bills of exchanges, etc:**

The Amended Section 22 (2) shall be read as under:

- (2) A company may, by writing under its common seal, if any, authorise any person, either generally or in respect of any specified matters, as its attorney to execute other deeds on its behalf in any place either in or outside India.

Provided that in case a company does not have a common seal, the authorisation under this sub-section shall be made by two directors or by a director and the Company Secretary, wherever the company has appointed a Company Secretary.

The Amended Section 22 (3) shall be read as under:

A deed signed by such an attorney on behalf of the company and under his seal shall bind the company.

*Effect of this Amendment*

The mandatory requirement for affixing common seal on Execution of bills of exchange, etc. has been done away with since its optional to have a common seal of the company.

**Section 46: Certificate of Shares**

The Amended Section 46 (1) shall be read as under:

A certificate issued under the common seal, if any, of the company or signed by two directors or by a director and the Company Secretary, wherever the company has appointed a Company Secretary, specifying the shares held by any person, shall be prima facie evidence of the title of the person to such shares.

*Effect of this Amendment*

The mandatory requirement for affixing common seal on share certificate has been done away with.

**Section 76A : Punishment for contravention of section 73 or section 76 (New Section inserted)**

Where a company accepts or invites or allows or causes any other person to accept or invite on its behalf any deposit in contravention of the manner or the conditions prescribed under section 73 or section 76 or rules made there under or if a company fails to repay the deposit or part thereof or any interest due thereon within the time specified under section 73 or section 76 or rules made there under or such further time as may be allowed by the Tribunal under section 73,-

- (a) 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
- (b) 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:

Provided that if it is proved that the officer of the company who is in default, has contravened such provisions knowingly or wilfully with the intention to deceive the company or its shareholders or depositors or creditors or tax authorities, he shall be liable for action under section 447.

*Effect of this Amendment*

This Section is newly inserted in principal Act with this amendment the act now prescribe the penalties and action to be initiated by the tribunal for such contraventions and defaults.

**Section 117: Resolutions and agreement to be filed**

A proviso has been inserted in 117(3)(g). The Amended Section 117 (3) (g) shall be read as under:

- (g) resolutions passed in pursuance of sub-section (3) of section 179;

Provided that no person shall be entitled under section 399 to inspect or obtain copies of such resolutions; and

*Effect of this Amendment:*

With this amendment, the Act restricts inspection of Board resolutions filed with Registrar of Companies, this will maintain confidentiality.

**Section 123: Declaration of dividend**

In Section 123(1) after third proviso the following was added as fourth Proviso:

“Provided also that no company shall declare dividend unless carried over previous losses and depreciation not provided in previous year or years are set off against profit of the company for the current year.”

*Effect of this addition of fourth proviso:*

With insertion of fourth proviso in section 123(1), no company shall declare dividend unless carried over previous losses and depreciation not provided in previous year or years are set off against profit of the company for the current year.

**Section 124: Unpaid Dividend Account**

The Amended Section 124 (6) shall be read as under:

All shares in respect of which dividend has not been paid or claimed for seven consecutive years or more shall be transferred by the company in the name of Investor Education and Protection Fund along with a statement containing such details as may be prescribed:

Provided that any claimant of shares transferred above shall be entitled to claim the transfer of shares from Investor Education and Protection Fund in accordance with such procedure and on submission of such documents as may be prescribed.

“*Explanation.*—For the removal of doubts, it is hereby clarified that in case any dividend is paid or claimed for any year during the said period of seven consecutive years, the share shall not be transferred to Investor Education and Protection Fund.”

*Effect of this Amendment:*

With this amendment, the requirement of transfer of equity shares on which the dividend remains unpaid or unclaimed for a continuous period of seven years shall be made to the IEPF.

**Section 134: Financial Statement, Board’s Report, etc.**

In section 134 (3) after clause (c), the following was inserted:

“(ca) details in respect of frauds reported by auditors under sub-section (12) of section 143 other than those which are reportable to the Central Government;”

*Effect of this Amendment:*

With this amendment the Board of Directors has to give details in Board’s report about the fraud reported by the auditors that are not required to be reported to the Central Government.

**Section 143: Power and Duties of Auditor and Auditing standards**

The Amended Section 143 (12) shall be read as under:

“(12) Notwithstanding anything contained in this section, if an auditor of a company in the course of the performance of his duties as auditor, has reason to believe that an offence of fraud involving such amount or amounts as may be prescribed, is being or has been committed in the company by its officers or employees, the auditor shall

report the matter to the Central Government within such time and in such manner as may be prescribed:

Provided that in case of a fraud involving lesser than the specified amount, the auditor shall report the matter to the audit committee constituted under section 177 or to the Board in other cases within such time and in such manner as may be prescribed:

Provided further that the companies, whose auditors have reported frauds under this sub-section to the audit committee or the Board but not reported to the Central Government, shall disclose the details about such frauds in the Board's report in such manner as may be prescribed."

*Effect of this Amendment:*

The Auditor to report the board or Audit Committee or Central Government as the case may be, of any fraud come across during the audit of the company committed by its officers and employees.

**Note :** this section of Companies (Amendment) Act, 2015 is not yet notified

### **Section 177: Audit Committee**

In Section 177(4) After clause (iv) the following proviso has been inserted-

"Provided that the Audit Committee may make omnibus approval for related party transactions proposed to be entered into by the company subject to such conditions as may be prescribed;"

*Effect of this Amendment:*

With this amendment, the Audit Committee has been given power to give omnibus approvals for related party transactions proposed to be entered into by the Company upto certain threshold.

**Note :** this section of Companies (Amendment) Act, 2015 is not yet notified

### **Section 185: Loan to Director**

In section 185 (1) (b) the following clauses and proviso has been inserted:

- (c) any loan made by a holding company to its wholly owned subsidiary\ company or any guarantee given or security provided by a holding company in respect of any loan made to its wholly owned subsidiary company; or
- (d) any guarantee given or security provided by a holding company in respect of loan made by any bank or financial institution to its subsidiary company:

Provided that the loans made under clauses (c) and (d) are utilised by the subsidiary company for its principal business activities.

*Effect of this Amendment:*

With this amendment, the exemption given under Rule 10 of Companies (Meeting of Board and its Powers) Rules, 2014 for loan made to wholly owned subsidiary was incorporated into the Act as a matter of abundant caution.

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

After Amendment Section 188(1) shall be read as :

- (i) for the words "special resolution", at both the places where they occur, the word "resolution" shall be substituted;
- (ii) after the third proviso, the following proviso shall be inserted, namely:—

Provided also that the requirement of passing the resolution under first proviso shall not be applicable for transactions entered into between a holding company and its wholly owned subsidiary whose accounts are consolidated with such holding company and placed before the shareholders at the general meeting for approval.;

After Amendment Section 188(3) shall be read as:

for the words “special resolution”, the word “resolution” shall be substituted.”

*Effect of this Amendment:*

In consideration of practical difficulties faced by corporates the requirement of special resolution for passing related party transaction has been diluted. Membes may pass such transactions by an ordinary resolutions. And the requirement of passing of RPTs by Ordinary Resolution is not applicable for transactions between holding and wholly owned subsidiary companies.

### **Section 212: Investigation into affair of company by Serious Fraud Investigation Office**

After amendment Section 212(6) shall be read as under:

Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), offences covered under section 447 of this Act shall be cognizable and no person accused of any offence under those sections shall be released on bail or on his own bond unless –

- (i) the Public Prosecutor has been given an opportunity to oppose the application for such release; and
- (ii) where the Public Prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail:

Provided that a person, who, is under the age of sixteen years or is a woman or is sick or infirm, may be released on bail, if the Special Court so directs:

Provided further that the Special Court shall not take cognizance of any offence referred to this sub-section except upon a complaint in writing made by –

- (i) the Director, Serious Fraud Investigation Office; or
- (ii) any officer of the Central Government authorised, by a general or special order in writing in this behalf by that Government.

*Effect of this Amendment*

No major effect of this amendment, only the detailed list of sections has been substituted.

### **Section 223: Inspector’s Report**

After Amendment Section 223(4) (a) shall be read as under:

- (a) by the seal if any, of the company whose affairs have been investigated; or

(Common seal provisions have been made optional)

### **Section 248: Power of Registrar to remove name of Company from Register of Companies**

After amendment Section 248(1)(a) shall be read as under:

- (a) a company has failed to commence its business within one year of its incorporation; or

The amended clauses of section 248(1)(b) shall be omitted.

*Effect of this amendment*

This is in line with omission of Section 11 relating to commencement of business.

Earlier to this amendment, the Registrar had power under section 248(1)(b) to remove name of the company if subscribers to the memorandum did not have paid the subscription which they had undertaken to pay within a period of one hundred and eighty days from the date of incorporation of a company and a declaration under sub-section (1) of section 11 to this effect has not been filed within one hundred and eighty days of its incorporation.

In line with discontinuance of declaration under sub-section (1) of section 11 before commencement of business. The said condition has also been removed from one of the power of registrar to remove name of the company

**Section 419: Benches of Tribunal**

After amendment Section 419(4) shall be read as under:

The President shall, for the disposal of any case relating to rehabilitation, restructuring, reviving, of companies, constitute one or more Special Benches consisting of three or more Members, majority necessarily being of Judicial Members”

*Note* : Not yet notified in the Principal Act.

**Section 435: Establishment of Special Courts**

After amendment Section 435(1) shall be read as under

The Central Government may, for the purpose of providing speedy trial of offences punishable under this Act with imprisonment of two years or more, by notification, establish or designate as many Special Courts as may be necessary.”

Provided that all other offences shall be tried, as the case may be, by a Metropolitan Magistrate or a Judicial Magistrate of the First Class having jurisdiction to try any offence under this Act or under any previous company law.

*Effect of this Amendment*

With this amendment the offences punishable under this Act with imprisonment of two years or more, shall be tried by a Metropolitan Magistrate or a Judicial Magistrate of the First Class having jurisdiction. This will reduce burden of special courts.

*Note* : Not yet notified in the Principal Act.

**Section 436: Offence triable by Special Court**

After amendment section 436(1)(a) shall be read as under:

- (a) all offences specified under sub-section (1) of section 435 shall be triable only by the Special Court established for the area in which the registered office of the company in relation to which the offence is committed or where there are more Special Courts than one for such area, by such one of them as may be specified in this behalf by the High Court concerned.”

*Note* : Not yet notified in the Principal Act.

**Section 462: Power of Court to grant relief in certain cases**

After amendment section 462(2) shall be read as under:

A copy of every notification proposed to be issued under sub-section (1), shall be laid in draft before each House of

Parliament, while it is in session, for a total period of thirty days, and if, both Houses agree in disapproving the issue of notification or both Houses agree in making any modification in the notification, the notification shall not be issued or, as the case may be, shall be issued only in such modified form as may be agreed upon by both the Houses.

After Amendment the following was added as 462(3) & (4):

- (3) In reckoning any such period of thirty days as is referred to in sub-section (2), no account shall be taken of any period during which the House referred to in subsection (2) is prorogued or adjourned for more than four consecutive days.
- (4) The copies of every notification issued under this section shall, as soon as may be after it has been issued, be laid before each House of Parliament.”

The text of the Amendment Act is appended as under:

**1**

**THE COMPANIES (AMENDMENT) ACT, 2015**

**NO. 21 OF 2015**

[25th May, 2015]

An Act to amend the Companies Act, 2013.

BE it enacted by Parliament in the Sixty-sixth Year of the Republic of India as follows:—

1. (1) This Act may be called the Companies (Amendment) Act, 2015.
- (2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint and different dates may be appointed for different provisions of this Act and any reference in any provision to the commencement of this Act shall be construed as a reference to the coming into force of that provision.
2. In section 2 of the Companies Act, 2013 (hereinafter referred to as the principal Act),—
  - (i) in clause (68), the words “of one lakh rupees or such higher paid-up share capital” shall be omitted;
  - (ii) in clause (71), in sub-clause (b), the words “of five lakh rupees or such higher paid-up capital,” shall be omitted.
3. In section 9 of the principal Act, the words “and a common seal” shall be omitted.
4. Section 11 of the principal Act, shall be omitted.
5. In section 12 of the principal Act, in sub-section (3), for clause (b), the following clause shall be substituted, namely:—
 

“(b) have its name engraved in legible characters on its seal, if any;”.
6. In section 22 of the principal Act,—
  - (i) in sub-section (2),—
    - (a) for the words “under its common seal”, the words “under its common seal, if any,” shall be substituted;
    - (b) the following proviso shall be inserted, namely:—
 

“Provided that in case a company does not have a common seal, the authorisation under this sub-section shall be made by two directors or by a director and the Company Secretary, wherever the company has appointed a Company Secretary.”;
  - (ii) in sub-section (3), the words “and have the effect as if it were made under its common seal” shall be omitted.
7. In section 46 of the principal Act, in sub-section (1), for the words “issued under the common seal of the company”, the words “issued under the common seal, if any, of the company or signed by two directors or by a



director and the Company Secretary, wherever the company has appointed a Company Secretary” shall be substituted.

**8.** After section 76 of the principal Act, the following section shall be inserted, namely:—

“76A. Where a company accepts or invites or allows or causes any other person to accept or invite on its behalf any deposit in contravention of the manner or the conditions prescribed under section 73 or section 76 or rules made there under or if a company fails to repay the deposit or part thereof or any interest due thereon within the time specified under section 73 or section 76 or rules made there under or such further time as may be allowed by the Tribunal under section 73,—

- (a) 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
- (b) 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:

Provided that if it is proved that the officer of the company who is in default, has contravened such provisions knowingly or wilfully with the intention to deceive the company or its shareholders or depositors or creditors or tax authorities, he shall be liable for action under section 447.”.

**9.** In section 117 of the principal Act, in sub-section (3),—

- (i) in clause (g), the word “and” occurring at the end shall be omitted;
- (ii) after clause (g), the following proviso shall be inserted, namely:—

“Provided that no person shall be entitled under section 399 to inspect or obtain copies of such resolutions; and”.

**10.** In section 123 of the principal Act, in sub-section (1), after the third proviso, the following proviso shall be inserted, namely:—

“Provided also that no company shall declare dividend unless carried over previous losses and depreciation not provided in previous year or years are set off against profit of the company for the current year.”.

**11.** In section 124 of the principal Act, in sub-section (6),—

- (i) for the words, brackets and figure “unpaid or unclaimed dividend has been transferred under sub-section (5) shall also be”, the words “dividend has not been paid or claimed for seven consecutive years or more shall be” shall be substituted;
- (ii) after the proviso, the following Explanation shall be inserted, namely:—

“*Explanation.*—For the removal of doubts, it is hereby clarified that in case any dividend is paid or claimed for any year during the said period of seven consecutive years, the share shall not be transferred to Investor Education and Protection Fund.”.

**12.** In section 134 of the principal Act, in sub-section (3), after clause (c), the following clause shall be inserted, namely:—

- “(ca) details in respect of frauds reported by auditors under sub-section (12) of section 143 other than those which are reportable to the Central Government;”.

**13.** In section 143 of the principal Act, for sub-section (12), the following sub-section shall be substituted, namely:—

“(12) Notwithstanding anything contained in this section, if an auditor of a company in the course of the performance of his duties as auditor, has reason to believe that an offence of fraud involving such amount or amounts as may be prescribed, is being or has been committed in the company by its officers or employees, the auditor shall report the matter to the Central Government within such time and in such manner as may be prescribed:

Provided that in case of a fraud involving lesser than the specified amount, the auditor shall report the matter to the audit committee constituted under section 177 or to the Board in other cases within such time and in such manner as may be prescribed:

Provided further that the companies, whose auditors have reported frauds under this sub-section to the audit committee or the Board but not reported to the Central Government, shall disclose the details about such frauds in the Board’s report in such manner as may be prescribed.”.

**14.** In section 177 of the principal Act, in sub-section (4), in clause (iv), the following proviso shall be inserted, namely:—

“Provided that the Audit Committee may make omnibus approval for related party transactions proposed to be entered into by the company subject to such conditions as may be prescribed;”.

**15.** In section 185 of the principal Act, in sub-section (1), in the proviso, after clause (b), the following clauses and proviso shall be inserted, namely:—

“(c) any loan made by a holding company to its wholly owned subsidiary company or any guarantee given or security provided by a holding company in respect of any loan made to its wholly owned subsidiary company;  
or

(d) any guarantee given or security provided by a holding company in respect of loan made by any bank or financial institution to its subsidiary company:

Provided that the loans made under clauses (c) and (d) are utilised by the subsidiary company for its principal business activities.”.

**16.** In section 188 of the principal Act,—

(a) in sub-section (1),—

(i) for the words “special resolution”, at both the places where they occur, the word “resolution” shall be substituted;

(ii) after the third proviso, the following proviso shall be inserted, namely:—

“Provided also that the requirement of passing the resolution under first proviso shall not be applicable for transactions entered into between a holding company and its wholly owned subsidiary whose accounts are consolidated with such holding company and placed before the shareholders at the general meeting for approval.”;

(b) in sub-section (3), for the words “special resolution”, the word “resolution” shall be substituted.

**17.** In section 212 of the principal Act, in sub-section (6), for the words, brackets and figures “the offences covered under sub-sections (5) and (6) of section 7, section 34, section 36, sub-section (1) of section 38, sub-section (5) of section 46, sub-section (7) of section 56, sub-section (10) of section 66, sub-section (5) of section 140, sub-section (4) of section 206, section 213, section 229, sub-section (1) of section 251, sub-section (3) of section 339 and section 448 which attract the punishment for fraud provided in section 447”, the words and figures “offence covered under section 447” shall be substituted.

**18.** In section 223 of the principal Act, in sub-section (4), in clause (a), for the words “by the seal”, the words “by the seal, if any,” shall be substituted.

**19.** In section 248 of the principal Act, in sub-section (1),—

- (i) in clause (a), after the word ‘incorporation’, the word ‘or’ shall be inserted;
- (ii) clause (b) shall be omitted.

**20.** In section 419 of the principal Act, in sub-section (4), the words “or winding up” shall be omitted.

**21.** In section 435 of the principal Act, in sub-section (1),—

- (i) for the words “trial of offences under this Act”, the words “trial of offences punishable under this Act with imprisonment of two years or more” shall be substituted;
- (ii) the following proviso shall be inserted, namely:—

“Provided that all other offences shall be tried, as the case may be, by a Metropolitan Magistrate or a Judicial Magistrate of the First Class having jurisdiction to try any offence under this Act or under any previous company law.”.

**22.** In section 436 of the principal Act, in sub-section (1), in clause (a), for the words “all offences under this Act”, the words, brackets and figures “all offences specified under sub-section (1) of section 435” shall be substituted.

**23.** In section 462 of the principal Act, for sub-section (2), the following sub-sections shall be substituted, namely:—

“(2)A copy of every notification proposed to be issued under sub-section (1), shall be laid in draft before each House of Parliament, while it is in session, for a total period of thirty days, and if, both Houses agree in disapproving the issue of notification or both Houses agree in making any modification in the notification, the notification shall not be issued or, as the case may be, shall be issued only in such modified form as may be agreed upon by both the Houses.

(3) In reckoning any such period of thirty days as is referred to in sub-section (2), no account shall be taken of any period during which the House referred to in subsection (2) is prorogued or adjourned for more than four consecutive days.

(4) The copies of every notification issued under this section shall, as soon as may be after it has been issued, be laid before each House of Parliament.”.

**DR. SANJAY SINGH**  
*Secretary to the Govt. of India.*

# Chapter XXX

## Notified Exemptions

### Notified Exemptions to Government Companies, Private Companies, Nidhi Companies & Non- Profit (Section - 8 ) Companies

For Government Companies, Private Companies, Nidhi Companies and Non-profit (Section-8) Companies, The Central Government vide Notification No. G.S.R. 463(E). 464(E) 465(E) 466(E) respectively Dated 05th June, 2015 directed that respective sections of the Companies Act, 2013 as notified in respective notifications shall not apply or shall apply with such exceptions, modification and adaptations which are as under :

#### 1. Exceptions, modification and adaptations to Government Companies

Sr. No.	Chapter / Section Number / Sub-section(s) in the Companies Act, 2013	Exceptions/Modifications/Adaptations
(1)	(2)	(3)
1.	<b>Chapter II</b> Section 4	<b>Incorporation of Company and matters incidental thereto</b> In section 4, in sub-section (1), in clause (a), the words in the case of a public limited company, or the last words "Private Limited" in the case of a private limited company' shall be omitted
2.	<b>Chapter IV</b> Section 56	<b>Share capital &amp; Debentures</b> In sub-section (1), after the proviso, the following provisos shall be inserted, namely :-  Provided further that the provisions of this sub-section, in so far as requires a proper instrument of transfer, to be duly stamped and executed by or on behalf of the transferor and by or on behalf of the transferee, shall not apply with respect to bonds issued by a Government company, provided that an intimation by the transferee specifying his name, address and occupation, if any, has been delivered to the company along with the certificate relating to the bond; and if no such certificate is in existence, along with the letter of allotment of the bond:  Provided also that the provisions of this sub-section shall not apply to a Government Company in respect of securities held by nominees of the Government.

Sr. No.	Chapter / Section Number / Sub-section(s) in the Companies Act, 2013	Exceptions/Modifications/Adaptations
(1)	(2)	(3)
		<p><b>Note:</b></p> <ol style="list-style-type: none"> <li>1. Section 56(1)(prescribing instruments of transfer) shall not apply to a government company in respect of securities held by nominees of the government.</li> <li>2. Section 56(1), in so far as it requires a proper instrument of transfer, to be duly stamped and executed by or on behalf of the transferor and by or on behalf of the transferee , shall not apply with respect to bonds issued by a Government company, provided that an intimation by the transferee specifying his name, address and occupation, if any, has been delivered to the company along with the certificate relating to the bond; and if no such certificate is in existence, along with the letter of allotment of the bond.</li> </ol>
3.	<p><b>Chapter VII</b> Section 89</p>	<p><b>Management and Administration</b></p> <p>Shall not apply.</p> <p><b>Note:</b> Section 89 dealing with declaration of beneficial interest does not apply to a government company.</p>
4.	Section 90	<p>Shall not apply.</p> <p><b>Note:</b> Section 90 dealing with investigation of beneficial ownership of shares in certain cases shall not apply to a government company.</p>
5.	Sub-section (2) of section 96	<p>In sub-section (2), for the words “some other place within the city, town or village in which the registered office of the company is situate”, the words “such other place as the Central Government may approve in this behalf ‘shall be substituted.</p> <p><b>Note:</b> Section 96(2) mandates that Annual General Meeting shall be held either at the Registered Office of the Company or some other place within the city, town or village in which the registered office of the company is situate. Government company may convene its Annual General Meeting at such other place as the Central Government may approve in this behalf.</p>
6.	<p><b>Chapter VIII</b> Second proviso to sub-section (1) of section 123</p>	<p><b>Declaration and Payment of Dividend</b></p> <p>Shall not apply to a Government Company in which the entire paid up share capital is held by the Central Government, or by any State Government or Governments or by the Central Government and one or more State Governments.</p>

Sr. No.	Chapter / Section Number / Sub-section(s) in the Companies Act, 2013	Exceptions/Modifications/Adaptations
(1)	(2)	(3)
7.	Subsection (4) of section 123	<p>Shall not apply to a Government Company in which the entire paid up share capital is held by the Central Government, or by any State Government or Governments or by the Central Government and one or more State Governments or by one or more Government Company.</p> <p><b>Note:</b> Section 123(4) states that the amount of dividend, including interim dividend, shall be deposited in a scheduled bank in a separate bank in a separate account within five days from the date of declaration of such dividend. It does not apply to a Government Company in which the entire paid up share capital is held by the Central Government, or by any State Government or Governments or by the Central Government and one or more State Governments or by one or more Government Company.</p>
8.	<p><b>Chapter IX</b></p> <p><b>Section 129</b></p>	<p><b>Accounts of Companies</b></p> <p>Shall not apply to the extent of application of Accounting Standard 17 (Segment Reporting) to the companies engaged in defence production.</p> <p><b>Note:</b> Section 129 relates to provisions relating to financial statement. Section 129 shall not apply Shall not apply to the extent of application of Accounting Standard 17 (Segment Reporting) to the companies engaged in defence production.</p>
9.	<p><b>Clause (e) of sub-section (3) of section 134</b></p>	<p>Shall not apply</p> <p><b>Note:</b> Section 134(3)(e) mandates Board's report to include in case of a company covered under sub-section (1) of section 178(Companies required to nomination and remuneration committee), company's policy on directors' appointment and remuneration including criteria for determining qualifications, positive attributes, independence of a director and other matters provided under sub-section (3) of section 178. It shall not apply to Government Companies.</p> <p>Accordingly, the Board's report does not have to disclose company's policy on directors' appointment and remuneration including criteria for determining qualifications, positive attributes, independence of a director and other matters provided under sub-section (3) of section 178.</p>
10.	<p><b>Clause (p) of sub-section (3) of section 134</b></p>	<p>Shall not apply in case the directors are evaluated by the Ministry or Department of the Central Government which is</p>

Sr. No.	Chapter / Section Number / Sub-section(s) in the Companies Act, 2013	Exceptions/Modifications/Adaptations
(1)	(2)	(3)
		<p>administratively in charge of the company, or, as the case may be, the State Government, as per its own evaluation methodology.</p> <p><b>Note:</b> Section 134(3)(p) requires the Board report to include in case of a listed company and every other public company having such paid-up share capital as may be prescribed, a statement indicating the manner in which formal annual evaluation has been made by the Board of its own performance and that of its committees and individual directors;</p> <p>It shall not apply in case the directors are evaluated by the Ministry or Department of the Central Government which is administratively in charge of the company, or, as the case may be, the State Government, as per its own evaluation methodology.</p>
11.	<p><b>Chapter XI</b></p> <p>Section 149(1)(b) and first proviso to sub-section (1) of section 149</p>	<p><b>Appointment and Qualification of Director</b></p> <p>Shall not apply.</p> <p><b>Note:</b> Provisions relating to maximum number of directors as provided in Section 149 do not apply to government companies.</p>
12.	<p>Clause (a) of sub-section (6) of section 149</p>	<p>In section 149, in sub-section (6), in clause (a), for the word “Board”, the words “Ministry or Department of the Central Government which is administratively in charge of the company, or, as the case may be, the State Government” shall be substituted</p> <p><b>Note:</b> Section 149(6)(a) relates to one of the conditions for being appointed as Independent director. It states that the independent director, who is in the opinion of the Board, is a person of integrity and possesses relevant expertise and experience. In case of Government Companies, the independent director, who is in the opinion of the Ministry or Department of the Central Government which is administratively in charge of the company, or, as the case may be, the State Government, is a person of integrity and possesses relevant expertise and experience, can be appointed as independent director subject to fulfilment of other conditions”.</p>
13.	<p>Clause (c) of sub-section (6) of section 149</p>	<p>Shall not apply.</p> <p><b>Note:</b> Section 149(6)(c) states that independent directors not to have had pecuniary relationship with the company, its holding, subsidiary or associate company, or their promoters, or directors,</p>

Sr. No.	Chapter / Section Number / Sub-section(s) in the Companies Act, 2013	Exceptions/Modifications/Adaptations
(1)	(2)	(3)
		during the two immediately preceding financial years or during the current financial year. This provision shall not apply to a government company.
14.	Sub-section (5) of section 152	<p>Shall not apply where appointment of such director is done by the Central Government or State Government, as the case may be.</p> <p><b>Note:</b> Section 152(5) deals with consent to act as director shall not apply to a government company.</p>
15.	Sub-sections (6) and (7) of section 152	<p>Shall not apply to –</p> <p>(a) a Government Company in which the entire paid up share capital is held by the Central Government, or by any State Government or Governments or by the Central Government and one or more State Governments;</p> <p>(b) a subsidiary of a Government company, referred to in (a) above, in which the entire paid up share capital is held by that Government company.</p> <p><b>Note:</b> Section 152(7) relates to filling up of vacancy of retiring director. It shall not apply to a government company subject to above said conditions.</p>
16.	Section 160	<p>Shall not apply to –</p> <p>(a) a Government Company in which the entire paid up share capital is held by the Central Government. or by any State Government or Governments or by the Central Government and one or more State Governments;</p> <p>(b) a subsidiary of a Government company, referred to in (a) above, in which the entire paid up share capital is held by that Government company.</p> <p><b>Note:</b> Section 160 relates to right of persons other than retiring directors to stand for directorship. Section 160 does not apply to a government company if the above said conditions are fulfilled.</p>
17.	Section 162	<p>Shall not apply to –</p> <p>(a) a Government Company in which the entire paid up share capital is held by the Central Government, or by any State Government or Governments or by the Central Government and one or more State Governments;</p>



Sr. No.	Chapter / Section Number / Sub-section(s) in the Companies Act, 2013	Exceptions/Modifications/Adaptations
(1)	(2)	(3)
		<p>(b) a subsidiary of a Government company, referred to in (a) above, in which the entire paid up share capital is held by that Government company.</p> <p><b>Note :</b> Section 162 relates to appointment of directors to be voted individually. Section 162 does not apply to a government company if the aforesaid conditions are fulfilled. Accordingly more than one director may be appointed through a single resolution.</p>
18.	Section 163	<p>Shall not apply to - (a) a Government Company in which the entire paid up share capital is held by the Central Government, or by any State Government or Governments or by the Central Government and one or more State Governments;</p> <p>(b) a subsidiary of a Government company referred to in (a) above, in which the entire paid up share capital is held by that Government company.</p> <p><b>Note:</b> Section 163 relates to option to adopt principle of proportional representation for appointment of directors. Section 163 does not apply to a government company if the above said conditions are fulfilled.</p>
19.	Sub-section (2) of section 164	<p>Shall not apply</p> <p><b>Note:</b> Section 164(2) relating to disqualification of director, for non-filing of financial statements for continuous period of three years in which he is a director or failure to repay deposits etc. Section 164(2) does not apply to a Government Company.</p>
20.	Section 170.	<p>Shall not apply to a Government Company in which the entire share capital is held by the Central Government, or by any State Government or Governments or by the Central Government or by one or more State Governments.</p> <p><b>Note:</b> Section 170 relates to register of directors and key managerial personnel and their holdings. Section 170 does not apply to a government company if the above said conditions are fulfilled.</p>
21.	Section 171.	<p>Shall not apply to a Government Company in which the entire share capital is held by the Central Government, or by any State Government or Governments or by the Central Government or by one or more State Governments.</p> <p><b>Note:</b> Section 171 deals with member's right to inspect. Section 171 does not apply to a government company if the above said conditions are fulfilled</p>

Sr. No.	Chapter / Section Number / Sub-section(s) in the Companies Act, 2013	Exceptions/Modifications/Adaptations
(1)	(2)	(3)
22.	<p><b>Chapter XII</b></p> <p>Clause (i) of sub-section (4) of section 177</p>	<p><b>Meeting of Board and its Power</b></p> <p>In clause (i) of sub-section (4) of the section 177, for the words “recommendation for appointment, remuneration and terms of appointment” the words “recommendation for remuneration” shall be substituted.</p> <p><b>Note:</b> Section 177(4) deals with terms of reference of audit committee. Audit committee of a government company can recommend only for remuneration of auditor.</p>
23.	Subsections (2), (3) and (4) of section 178	<p>Shall not apply to Government company except with regard to appointment of ‘senior management’ and other employees.</p> <p><b>Note:</b> Provision relating induction of directors, criteria/qualifications etc does not apply to a Government company and accordingly Nomination and remuneration committee of government company will lay down those criteria for senior management and other employees.</p>
24.	Section 185	<p>Shall not apply to Government company in case such company obtains approval of the Ministry or Department of the Central Government which is administratively in charge of the company, or, as the case may be, the State Government before making any loan or giving any guarantee or providing any security under the section.</p> <p><b>Note:</b> Section 185 prohibits loans to directors with few exceptions. It shall not apply to Government company in case such company obtains approval of the Ministry or Department of the Central Government which is administratively in charge of the company, or, as the case may be, the State Government before making any loan or giving any guarantee or providing any security under the section.</p>
25.	Section 186	<p>Shall not apply to –</p> <p>(a) a Government company engaged in defence production;</p> <p>(b) a Government company, other than a listed company, in case such company obtains approval of the Ministry or Department of the Central Government which is administratively in charge of the company, or, as the case may be, the State Government before making any loan or giving any guarantee or providing any security or making any investment under the section.</p> <p><b>Note :</b> Section 186 relates to loans and investment by company. It does not apply to the above said government companies.</p>

Sr. No.	Chapter / Section Number / Sub-section(s) in the Companies Act, 2013	Exceptions/Modifications/Adaptations
(1)	(2)	(3)
26.	First and second proviso to sub-section (1) of section 188.	<p>Shall not apply to –</p> <p>(a) a Government company in respect of contacts or arrangements entered into by it with any other Government company;</p> <p>(b) a Government company, other than a listed company, in respect of contracts or arrangements other than those referred to in clause (a), in case such company obtains approval of the Ministry or Department of the Central Government which is administratively in charge of the company, of, as the case may be, the State Government before entering into such contract or arrangement.</p> <p>Descriptive Note: Section 188 relates to related party transactions. Section 188 does not apply to government company if above said conditions are fulfilled.</p>
27.	<p><b>Chapter XIII</b></p> <p>Sub-sections (2), (4) and (5) of section 196.</p>	<p><b>Appointment and Remuneration of Managerial Person</b></p> <p>Shall not apply.</p> <p><b>Note:</b> Section 196(2) relates to term of managing director not to exceed five years. Section 196(4) relates to approval of the members/ central government as the case may be for appointment of managing director and section 196(5) relates to validity of actions of Managing Director if his appointment is not approved at the General Meeting. These provisions are not applicable to a government company.</p>
28.	Section 197	<p>Shall not apply.</p> <p><b>Note:</b> The provisions relating to overall maximum managerial remuneration and managerial remuneration in case of absence or inadequacy of profits as given in section 197 does not apply to a government company. 29. Sub-sections (1), (2), (3) and (4) of section 203. After sub-section (4), the following sub-section shall be inserted, namely:-</p>
29.	Sub-section (1), (2), (3) and (4)	<p>After sub-section (4), the following sub-section shall be inserted, namely:-</p> <p>“(4A) The provisions of sub-sections (1), (2), (3) and (4) of this section shall not apply to a managing director or Chief Executive Officer or manager and in their absence, a whole-time director of the Government Company.”</p>

Sr. No.	Chapter / Section Number / Sub-section(s) in the Companies Act, 2013	Exceptions/Modifications/Adaptations
(1)	(2)	(3)
		<b>Note:</b> The Provisions of section 203 relating to appointment of KMP shall not apply to MD/CEO/Manager or in their absence a whole time director of the Government Company.
30.	<b>Chapter XXIX</b> Sub-section (2) of section 439.	<b>Miscellaneous</b> In sub-section (2), the words “the Registrar, a shareholder of the company, or of” shall be omitted. <b>Note:</b> Section 439 deals with offences to be non-cognizable. As per Section 439(2) states that no court shall take cognizance of any offence under this Act which is alleged to have been committed by any company or any officer thereof, except on the complaint in writing of the Registrar, a shareholder of the company, or of a person authorised by the Central Government in that behalf. With the deletion of words “the Registrar, a shareholder of the company, or of” relates to a government company, no court shall take cognizance of any offence under this Act which is alleged to have been committed by any company or any officer thereof, except on the complaint in writing of a person authorised by the Central Government in that behalf.

## 2. Exceptions, modification and adaptations for Private Companies

Sr. No.	Chapter / Section Number / Sub-section(s) in the Companies Act, 2013	Exceptions/Modifications/Adaptations
(1)	(2)	(3)
1	<b>Chapter 1</b> Section 2(76) (viii)	<b>Preliminary</b> Shall not apply with respect to Section 188 <b>Note:</b> Section 2(76) defines related party with reference to a company and as per Section 2(76)(viii) the following are considered to be related party. (a) A holding, subsidiary or an associate company of such company or (b) A subsidiary of holding company to which it is also a subsidiary. <b>Effect:</b> Section 2(76)(viii) is not applicable to a private company with respect to Section 188 (i.e related party transactions) Accordingly a holding/ subsidiary/ associate company of a private

Sr. No.	Chapter / Section Number / Sub-section(s) in the Companies Act, 2013	Exceptions/Modifications/Adaptations
(1)	(2)	(3)
		limited company or a subsidiary of holding company of a private limited company will not be considered as related party.
2	<p><b>Chapter IV</b></p> <p>Section 43 &amp; Section 47</p>	<p><b>Share Capital and Debentures</b></p> <p>Shall not apply where memorandum or articles of association of the private Company so provides.</p> <p><b>Note:</b> Section 43 deals with kinds of capital and Section 47 deals with voting rights.</p> <p><b>Effects:</b> Memorandum or Articles of Association of a Private Limited Company can provide for a clause, making sections 43 and section 47 not applicable to that company.</p>
3	<p><b>Chapter IV</b></p> <p>Section 62(1)(a)(i) and Section 62(2)</p>	<p><b>Share capital and Debenture</b></p> <p>In clause (a), in sub-clause (i), the following proviso shall be inserted, namely;-</p> <p>Provided that notwithstanding anything contained in this sub-clause and sub section (2) of this section, in case ninety per cent. of the members of a private company have given their consent in writing or in electronic mode, the periods lesser than those specified in the said sub-clause or sub-section shall apply.</p> <p><b>Note:</b> Section 62 deals with further issue of shares. Section 62(1)(a) deals with conditions for sending letter of offer the existing holders. Section 62(1)(a)(i) deals with the time within which the letter of offer is to be accepted by the existing shareholders. According to Section 62(1)(a)(i) the offer shall be made by notice specifying the number of shares offered and limiting a time of not being less than fifteen days and not exceeding thirty days from the date of offer within which the offer, if not accepted, shall be deemed to have been declined.</p> <p><b>Effects:</b> In case ninety per cent of the members of a private company have given their consent in writing or in electronic mode, the periods lesser than those specified in the said sub-clause or sub-section shall apply.</p> <p>Accordingly time limit for acceptance of offer by existing shareholders may be less than 15 days if 90% of the members of a private limited company have given their consent either in writing or through electronic mode. The reference to Section 62(1)(a)(i) in Section 62(2) would accordingly apply.</p>

Sr. No.	Chapter / Section Number / Sub-section(s) in the Companies Act, 2013	Exceptions/Modifications/Adaptations
(1)	(2)	(3)
4	Section 62(1)(b)	<p>In clause (b), for the words “special resolution”, the words “ordinary resolution” shall be substituted.</p> <p><b>Note:</b> Section 62(1)(b) requires passing of Special Resolution for offering of further shares to employees subject to passing of special resolution and other conditions prescribed under the rules.</p> <p><b>Effect:</b> For private Limited Companies, passing of ordinary resolution is sufficient.</p>
5	Section 67	<p>Shall not apply to private companies -</p> <p>(a) in whose share capital no other body corporate has invested any money;</p> <p>(b) if the borrowings of such a company from banks or financial institutions or any body-corporate is less than twice its paid up share capital or fifty crore rupees, whichever is lower; and</p> <p>(c) such a company is not in default in repayment of such borrowings subsisting at the time of making transactions under this section.</p> <p><b>Note:</b> Section 67 deals with restrictions on purchase by a company or giving loans by it for purchase of its shares.</p> <p><b>Effects:</b> Private Companies are exempted from Section 67 subject to the following three conditions.</p> <p>(i) a private limited company in whose share capital no other body corporate has invested any money;</p> <p>(ii) Borrowings by such private company from banks or financial institutions or any body-corporate is less than twice its paid up share capital or fifty crore rupees, whichever is lower; and</p> <p>(iii) such a company is not in default in repayment of such borrowings subsisting at the time of making transactions under this section.</p>
6	<p><b>Chapter V</b></p> <p>Section 73(2)(a) to Section 73(2)(e)</p>	<p><b>Acceptance of Deposits by Companies</b></p> <p>Shall not apply to a private company which accepts from its members monies not exceeding one hundred per cent of aggregate of the paid up share capital and free reserves, and such company shall file the details of monies so accepted to the Registrar in such manner as may be specified.</p> <p><b>Note:</b> Section 73(2) deals with conditions for acceptance of deposits from members.</p>

Sr. No.	Chapter / Section Number / Sub-section(s) in the Companies Act, 2013	Exceptions/Modifications/Adaptations
(1)	(2)	(3)
		<p><b>Effects:</b> Conditions for acceptance of deposits from members is not applicable to a Private Company if the monies accepted does not exceed one hundred per cent of aggregate of the paid up share capital and free reserves, and such company shall file the details of monies so accepted to the Registrar in such manner as may be specified.</p>
7	<p><b>Chapter VII</b></p> <p>Section 101 to Section 107 and Section 109.</p>	<p><b>Management and Administration</b></p> <p>Shall apply unless otherwise specified in respective sections of the articles of the company provide otherwise.</p> <p><b>Note:</b> Articles of Association of a Private Company can have specific provisions with respect to - notice of the general meeting (Section 101); Statement to be annexed to notice (Section 102); Quorum for meeting (Section 103); Chairman of meetings (Section 104); proxies (Section 105); restriction on voting rights (Section 106); Voting by show of hands (Section 107); Demand for poll (Section 109).</p> <p><b>Effects:</b> Articles of Association of a Private Company may have specific provisions with respect to above mentioned sections.</p>
8	Section 117(3)(g)	<p>Shall not apply</p> <p><b>Note:</b> Section 117 deals with resolutions and agreements to be filed with registrar. Section 117(3)(g) deals with filing of resolutions passed in pursuance of sub-section (3) of section 179(i.e., resolutions to be passed only at the meeting of Board of directors).</p> <p><b>Effects:</b> Private companies are not required to file with the registrar the resolutions passed under Section 179(3).</p>
9	<p><b>Chapter 10</b></p> <p>Section 141(3)(g)</p>	<p><b>Audit and auditors</b></p> <p>Shall apply with the modification that the words “other than one person companies, dormant companies, small companies and private companies having paid-up share capital less than one hundred crore rupees” shall be inserted after the words “twenty companies”.</p> <p><b>Note:</b> Section 141(3) deals with conditions for eligibility for appointment as an auditor of a company. Section 143(3)(g) limits the number of audits by an auditor to twenty companies.</p> <p><b>Effects:</b> One person companies, dormant companies, small companies and private companies having paid-up share capital less than one hundred crore rupees are excluded from this limit.</p>

Sr. No.	Chapter / Section Number / Sub-section(s) in the Companies Act, 2013	Exceptions/Modifications/Adaptations
(1)	(2)	(3)
10	<b>Chapter XI</b> Section 160	<b>Appointment and qualification of directors</b> Shall not apply <b>Note:</b> Section 160 deal with right of persons other than retiring directors to stand for directorship. <b>Effect:</b> Now, for private companies' requirement of Deposit of Rupees one lakh is not required.
11	Section 162	Shall not apply <b>Note :</b> Section 162 deals with appointment of directors to be voted individually. <b>Effect:</b> Now, more than one director can be appointed through a single resolution.
12	<b>Chapter XII</b> Section 180	<b>Meetings of board and its powers</b> Shall not apply <b>Note:</b> Section 180 deals with restrictions on powers of the Board. <b>Effects:</b> Special Resolution is not required to exercise such power of board as provided in Section 180.
13	Section 184(2)	Shall apply with the exception that the interested director may participate in such meeting after disclosure of his interest. <b>Note:</b> Section 184 deals with disclosure of interest by director. Section 184(2) prohibits interested director from participating in meeting. <b>Effects:</b> Interested director of a private company can participate in the meeting after disclosing his interest.
14	Section 185	Shall not apply to a private company - (a) in whose share capital no other body corporate has invested any money; (b) if the borrowings of such a company from banks or financial institutions or anybody corporate is less than twice of its paid up share capital or fifty crore rupees, whichever is lower; and (c) Such a company has no default in repayment of such borrowings subsisting at the time of making transactions under this Section. <b>Note:</b> Section 185 deals with loans to directors



Sr. No.	Chapter / Section Number / Sub-section(s) in the Companies Act, 2013	Exceptions/Modifications/Adaptations
(1)	(2)	(3)
		<p><b>Effects:</b> the Provisions of Section 185 shall not apply to a private company if the following conditions are fulfilled.</p> <p>(i) that no other body corporate has invested any money in share of the company ;</p> <p>(b) that the borrowings of such company from banks or financial institutions or anybody corporate is less than twice of its paid up share capital or fifty crore rupees, whichever is lower; and</p> <p>(c) that the company has no made any default in repayment of such borrowings subsisting at the time of making transactions under this Section.</p>
15	Second proviso to Section 188(1)	<p>Shall not apply</p> <p><b>Note:</b> Second proviso to Section 188(1) states that no member of the company shall vote on such resolution, to approve any contract or arrangement which may be entered into by the company, if such member is a related party.</p> <p><b>Effects:</b> in private company, related party to any contract or arrangement can vote on such resolution as a member of the company.</p>
16	<p><b>Chapter XIII</b></p> <p>Section 196(4) and (5)</p>	<p><b>Appointment and Remuneration of the Managerial Personnel</b></p> <p>Shall not apply</p> <p><b>Note:</b> Section 196(4) deals with appointment of managing director, whole time director or manager</p> <p>Section 196(5) deals with validating actions of managing director; whole time Director/manager, if the appointment is not approved by a company in general meeting.</p> <p><b>Effects:</b> Approval of central government on variation of terms of appointment from Schedule V is not required for private companies.</p>

**Exceptions, modification and adaptations to Nidhi Companies**

Sr. No.	Chapter / Section Number / Sub-section(s) in the Companies Act, 2013	Exceptions/Modifications/Adaptations
(1)	(2)	(3)
1	<b>Chapter II</b> Section 20(2)	<b>Incorporation of Company</b> Shall apply subject to the modification that in the case of a Nidhi, the document may be served only on members who hold shares of more than one thousand rupees in face value or more than one per cent of the total paid-up share capital of the Nidhi's whichever is less. For other shareholders, document may be served by a public notice in newspaper circulated in the district where the Registered Office of the Nidhi is situated; and publication of the same on the notice board of the Nidhi. <b>Note:</b> Section 20 deals with service of documents.
2	<b>Chapter III</b> Section 42 except sub-section(1), explanation (II) to sub-section (2), sub-sections(4), (6), (8), (9) and (10)	<b>Prospectus and Allotment of Securities</b> Shall not apply. <b>Note:</b> Provisions of Section 42(2) except for explanation II, Section 42(3), Section 42(5), Section 42(7) shall not apply to Nidhi companies. Accordingly provision such as recording of names of proposed allottees prior to invitation to subscribe, restrictions on fresh offer, restrictions on payment of subscription money through cash etc. shall not apply to Nidhi companies.
3	<b>Chapter IV</b> Section 47(1)(b)	<b>Share Capital &amp; Debenture</b> Shall apply, subject to the modification that no member shall exercise voting rights on poll in excess of five per cent of total voting rights of equity shareholders. <b>Note:</b> Section 47(1)(b) deals with voting right on a poll to be in proportion with the paid-up share capital held. In Nidhi companies it shall apply, subject to the modification that no member shall exercise voting rights on poll in excess of five per cent of total voting rights of equity shareholders.
4	Section 62	Shall not apply. <b>Note:</b> Section 62 relates to further issue of share capital. Section 62 is not applicable to Nidhi companies.
5	Section 67(1)	Shall not apply, when shares are purchased by the company from a member on his ceasing to be a depositor or borrower and it shall not be considered as reduction of capital under section 66 of the Companies Act, 2013.

Sr. No.	Chapter / Section Number / Sub-section(s) in the Companies Act, 2013	Exceptions/Modifications/Adaptations
(1)	(2)	(3)
		<p><b>Note:</b> Section 67(1) states that no company limited by shares or by guarantee and having a share capital shall have power to buy its own shares unless the consequent reduction of share capital is effected under the provisions of the Act. It shall not apply to Nidhi companies when shares are purchased by the company from a member on his ceasing to be a depositor or borrower and it shall not be considered as reduction of capital under section 66 of the Companies Act, 2013.</p>
6	<p><b>Chapter VIII</b> Section 123(5)</p>	<p><b>Declaration and payment of dividend</b></p> <p>Shall apply, subject to the modification that any dividend payable in cash may be paid by crediting the same to the account of the member, if the dividend is not claimed within 30 days from the date of declaration of the dividend.</p> <p><b>Note:</b> Section 123(5) states that no dividend shall be paid by a company in respect of any shares therein except to the registered shareholder of such share or his order or to his banker and shall not be payable except in cash. These provisions shall apply subject to the modification that any dividend payable in cash may be paid by crediting the same to the account of the member, if the dividend is not claimed within 30 days from the date of declaration of the dividend.</p>
7	Section 127	<p>Shall apply, subject to the modification that where the dividend payable to a member is one hundred rupees or less, it shall be sufficient compliance of the provisions of the section, if the declaration of dividend is announced in the local language in one local news paper of wide circulation and announcement of the said declaration is also displayed on the notice board of the Nidhis for at least three months.</p> <p>Descriptive note:</p> <p>Section 127 deals with punishment for failure to distribute dividend. However for Nidhi companies, where the dividend payable to a member is one hundred rupees or less, it shall be sufficient compliance of the provisions of the section, if the declaration of dividend is announced in the local language in one local news paper of wide circulation and announcement of the said declaration is also displayed on the notice board of the Nidhis for at least three months.</p>
8	<p><b>Chapter IX</b> Section 136(1)</p>	<p><b>Accounts of Companies</b></p> <p>Shall apply, subject to the modification that, in the case of members who do not individually or jointly hold shares of more than one thousand rupees in face value or more than one per cent of the total</p>

Sr. No.	Chapter / Section Number / Sub-section(s) in the Companies Act, 2013	Exceptions/Modifications/Adaptations
(1)	(2)	(3)
		<p>paid-up share capital whichever is less, it shall be sufficient compliance with the provisions of the section if an intimation is sent by Public notice in newspaper circulated in the district in which the Registered Office of the Nidhi is situated stating the date, time and venue of Annual General Meeting and the financial statement with its enclosures can be inspected at the registered office of the company, and the financial statement with enclosures are affixed in the Notice Board of the company and a member is entitled to vote either in person or through proxy.</p> <p><b>Note:</b> Section 136(1) deals with the right of the members to copies of audited financial statement. In case of Nidhi companies, for members not holding individually or jointly shares of more than one thousand rupees in face value or more than one per cent of the total paid-up share capital whichever is less, it shall be sufficient compliance with the provisions of the section if an intimation is sent by Public notice as prescribed above.</p>
9	<p><b>Chapter XI</b> Section 160</p>	<p><b>Appointment and Qualification of Director</b></p> <p>In sub-section (1), for the words “one lakh rupees”, the words “ten thousand rupees” shall be substituted.</p> <p><b>Note:</b> Section 160(1) requires a deposit of Rs. 1 lakh for nomination of a director. For Nidhi companies such deposit is Rs 10,000/-.</p>
10	<p><b>Chapter XII</b> Section 185</p>	<p><b>Meeting of Board and Its Power</b></p> <p>Shall not apply, provided the loan is given to a director or his relative in their capacity as members and such transaction is disclosed in the annual accounts by a note.</p> <p><b>Note:</b> Section 185 prohibits loans to directors with some exceptions. However, it shall not apply to Nidhi companies, provided the loan is given to a director or his relative in their capacity as members and such transaction is disclosed in the annual accounts by a note.</p>
11	<p><b>Chapter XIII</b> Second proviso to sub-section (1) of section 197</p>	<p><b>Appointment and Remuneration of Managerial Person</b></p> <p>Shall apply with the modification that the remuneration of a director who is neither managing director nor whole time director or manager for performing special services to the Nidhis specified in the articles of association may be paid by way of monthly payment subject to the approval of the company in general meeting and also to the provisions of section 197 :</p>

Sr. No.	Chapter / Section Number / Sub-section(s) in the Companies Act, 2013	Exceptions/Modifications/Adaptations
(1)	(2)	(3)
		<p>Provided that no approval of the company in general meeting shall be required where,-</p> <p>(a) a Nidhi does not have a managing director or a whole-time director or a manager;</p> <p>(b) the remuneration payable during a financial year to all the directors of the Nidhi does not exceed ten per cent of the net profits of such Nidhi or fifteen lakh rupees, whichever is less; and</p> <p>(c) a remuneration payable under clause (b) is approved by a special resolution passed in this behalf by the Nidhi.</p> <p><b>Note:</b> Section 197 deals with overall maximum managerial remuneration and managerial remuneration in case absence or inadequacy of profits. Second proviso to Section 197(1) limits the remuneration payable to directors who are neither managing directors nor whole-time directors to one per cent of the net profits of the company, if there is a managing or whole-time director or manager; three per cent of the net profits in any other case. However, Nidhi companies are allowed to pay remuneration to directors who are neither managing directors nor whole-time directors, for performing special services subject to conditions as laid down.</p>
12	<p><b>Chapter XXIV</b></p> <p>Section 403</p>	<p><b>Registration offices and Fees</b></p> <p>Shall apply, with the modification that the filing fees in respect of every return of allotment under sub-section (9) of section 42 shall be calculated at the rate of one rupee for every one hundred rupees or parts thereof on the face value of the shares included in the return but shall not exceed the amount of normal filing fee payable.</p> <p><b>Note:</b> Section 403 deals with filing fee. For Nidhi companies it shall apply with the modification that the filing fees in respect of every return of allotment under sub-section (9) of section 42 shall be calculated at the rate of one rupee for every one hundred rupees or parts thereof on the face value of the shares included in the return but shall not exceed the amount of normal filing fee payable.</p>

#### 4. Exceptions, modification and adaptations to Section 8(Non -Profit) Companies

Sr. No.	Chapter / Section Number / Sub-section(s) in the Companies Act, 2013	Exceptions/Modifications/Adaptations
(1)	(2)	(3)
1	<b>Chapter 1</b> Section 2(24)	<b>Preliminary</b> The provisions of clause (24) of section 2 shall not apply. <b>Note:</b> The definition of the term Secretary as defined in Section 2(24) does not apply to Section 8 Companies.
2	Section 2(68)	The requirement of Minimum paid-up share capital shall not apply. <b>Note:</b> Section 2(68) defines a private company. Though the companies (amendment) Act 2015 has removed the minimum prescription of Rs.1 lakh as minimum paid up capital for private limited companies, the provisions for prescribing minimum paid up capital is retained. However, the requirement of minimum- paid up capital shall not apply to section 8 companies.
3	Section 2(71)	The requirement of Minimum paid-up share capital shall not apply. <b>Note:</b> Section 2(71) defines a public company. Though the companies (amendment) Act 2015 has removed the minimum prescription of Rs.5 lakh as minimum paid up capital for public limited companies, the provisions for prescribing minimum paid up capital is retained. However, the requirement of minimum- paid up capital shall not apply to section 8 companies.
4	Chapter VII Section 96(2)	<b>Management and Administration</b> In sub-section (2), after the proviso and before the explanation, the following proviso shall be inserted, namely:- Provided further that the time, date and place of each annual general meeting are decided upon before-hand by the board of directors having regard to the directions, if any, given in this regard by the company in its general meeting. <b>Note:</b> Section 96(2) inter-alia covers time, date venue of annual general meeting. In case of Section 8 companies, the time, date and place of each annual general meeting are decided upon before-hand by the board of directors having regard to the directions, if any, given in this regard by the company in its general meeting.
5	Section 101(1)	In sub-section (1), for the words "Twenty one days" the words "Fourteen Days" shall be substituted. <b>Note:</b> Section 101(1) deals with notice of the General meeting with clear twenty one days notice. In case of Section 8 Companies 14 clear days notice is sufficient for a general meeting.

Sr. No.	Chapter / Section Number / Sub-section(s) in the Companies Act, 2013	Exceptions/Modifications/Adaptations
(1)	(2)	(3)
6	Section 118	<p>The section shall not apply as a whole except that minutes may be recorded within thirty days of the conclusion of every meeting in case of companies where the articles of association provide for confirmation of minutes by circulation.</p> <p><b>Note:</b> Section 118 deals with minutes of proceedings of general/ board and other meetings. Provision of Section 118 does not apply to Section 8 companies except that minutes may be recorded within thirty days of the conclusion of every meeting in case of companies where the articles of association provide for confirmation of minutes by circulation.</p>
7	<p><b>Chapter IX</b></p> <p>Section 136(1)</p>	<p><b>Accounts of Companies</b></p> <p>In sub-section (1), for the words “twenty one days”, the words “fourteen days” shall be substituted.</p> <p><b>Note:</b> Section 136(1) deals with the rights of members to copies of audited financial statement, before twenty-one days before the date of annual general meeting. Section 8 companies may send the audited financial statements 14 days before the date of annual general meeting.</p>
8	<p><b>Chapter XI</b></p> <p>Sub-section (1) of Section 149 and the first proviso to sub-section (1)</p>	<p><b>Appointment and Qualification of Director</b></p> <p>Shall not apply.</p> <p><b>Note:</b> Section 149(1) and first proviso to sub-section (1) relates to minimum and maximum number of directors. It is not applicable to Section 8 Companies.</p>
9	<p>Sub-sections (4), (5), (6), (7), (8), (9), (10), (11), clause (i) of sub-section (12) and sub-section (13) of section 149.</p>	<p>Shall not apply.</p> <p><b>Note:</b> The cluster of sub-sections of section 149 given herein pertains to independent directors. These provisions will not apply to a Section 8 Company.</p>
10	Section 150	<p>Shall not apply.</p> <p><b>Note:</b> Section 150 deals with manner of selection of independent directors and maintenance of databank of independent directors, which is not applicable to Section 8 companies.</p>
11	<p>Proviso to sub-section (5) of section 152</p>	<p>Shall not apply.</p> <p><b>Note:</b> Proviso to sub-section (5) of section 152 relates to</p>

Sr. No.	Chapter / Section Number / Sub-section(s) in the Companies Act, 2013	Exceptions/Modifications/Adaptations
(1)	(2)	(3)
		appointment of independent directors. It is not applicable to section 8 companies.
12	Section 160	<p>Shall not apply to companies whose articles provide for election of directors by ballot.</p> <p><b>Note:</b> Section 160 deals with right of persons other than retiring directors to stand for directorship. Section 160 shall not apply to section 8 companies whose articles provide for election of directors by ballot.</p>
13	Section 165(1)	<p>Shall not apply.</p> <p><b>Note:</b> Section 165(1) deals with restrictions on number of directorships. Directorship of Section 8 Companies are not reckoned for this purpose.</p>
14	<p><b>Chapter XII</b></p> <p>Section 173(1)</p>	<p><b>Meeting of Board and its Powers</b></p> <p>Shall apply only to the extent that the Board of Directors, of such Companies shall hold at least one meeting within every six calendar months.</p> <p><b>Note:</b> Section 173(1) mandates convening of first board meeting within 30 days of incorporation and minimum of four board meeting every year, with a gap not exceeding 120 days between two consecutive meetings. With regard to Section 8 companies this section shall apply only to the extent that the Board of Directors, of such Companies shall hold at least one meeting within every six calendar months.</p>
15	Section 174(1)	<p>In sub-section (1),—</p> <p>(a) for the words “one-third of its total strength or two directors, whichever is higher”, the words “either eight members or twenty five per cent. of its total strength whichever is less” shall be substituted;</p> <p>(b) the following proviso shall be inserted, namely:-</p> <p>“Provided that the quorum shall not be less than two members”.</p> <p><b>Note:</b> Section 174(1) states that the quorum for a meeting of the Board of Directors of a company shall be one third of its total strength or two directors, whichever is higher, and the participation of the directors by video conferencing or by other audio visual means shall also be counted for the purposes of quorum under this sub-section. In case of Section 8 companies the quorum for the board</p>



Sr. No.	Chapter / Section Number / Sub-section(s) in the Companies Act, 2013	Exceptions/Modifications/Adaptations
(1)	(2)	(3)
		meetings shall be either eight members or twenty five per cent. of its total strength whichever is less. However, the quorum shall not be less than two members.
16	Section 177(2)	The words “with independent directors forming a majority” shall be omitted. <b>Note:</b> Section 177(2) requires audit committee to have majority of independent directors. It is not required for Section 8 Companies.
17	Section 178	Shall not apply <b>Note :</b> Section 178 pertains to nomination and remuneration committee and stakeholders’ relationship committee. Section 178 is not applicable to section 8 companies.
18	Section 179	Matters referred to in clauses (d), (e) and (f) of sub-section (3) may be decided by the Board by circulation instead of at a Meeting. <b>Note :</b> Section 179(3) deals with resolutions to be passed at meetings of the Board. Section 179(3)(d), (e) and (f) pertains to resolution to borrow moneys, to invest funds of the company and to grant loans or give guarantee or provide security in respect of loans. These items may be decided by the Board by circulation in case of Section 8 companies.
19	Sub-section (2) of section 184	Shall apply only if the transaction with reference to section 188 on the basis of terms and conditions of the contract or arrangement exceeds one lakh rupees. <b>Note :</b> Section 184(2) prohibits participation of interested directors. In case of Section 8 Companies it shall apply only if the transaction with reference to section 188 on the basis of terms and conditions of the contract or arrangement exceeds one lakh rupees.
20	Section 189	Shall apply only if the transaction with reference to section 188 on the basis of terms and conditions of the contract or arrangement exceeds one lakh rupees. <b>Note:</b> Section 189 deals with register of contracts or arrangements in which directors are interested. Section 189 is applicable to section 8 companies only if the transaction with reference to section 188 on the basis of terms and conditions of the contract or arrangement exceeds one lakh rupees.

1

[TO BE PUBLISHED IN THE GAZETTE OF INDIA, EXTRAORDINARY, PART II

SECTION 3, SUB-SECTION (i)]

GOVERNMENT OF INDIA

MINISTRY OF CORPORATE AFFAIRS

NOTIFICATION

New Delhi, the 5th June, 2015

**G.S.R. 463(E).** - In exercise of the powers conferred by clauses (a) and (b) of sub-section (1) of Section 462 and in pursuance of sub-section (2) of said section of the Companies Act, 2013 (18 of 2013) and in supersession of notifications issued under section 620 of the Companies Act, 1956 (1 of 1956). except as respects things done or omitted to be done before such supersession, the Central Government, in the interest of public, hereby directs that certain provisions of the Companies Act, 2013, as specified in column (2) of the Table, shall not apply or shall apply with such exceptions, modifications and adaptations, as specified in column (3) of the said Table, to a Government company, namely:-

<i>Sr. No.</i>	<i>Chapter / Section Number / Sub-section(s) in the Companies Act, 2013</i>	<i>Exceptions/Modifications/Adaptations</i>
<i>(1)</i>	<i>(2)</i>	<i>(3)</i>
1.	Chapter II, section 4.	In section 4. in sub-section (1), in clause (a), the words 'in the case of a public limited company, or the last words "Private Limited" in the case of a private limited company' shall be omitted.
2.	Chapter IV, section 56.	In sub-section (1), after the proviso, the following provisos shall be inserted, namely:-  Provided further that the provisions of this sub-section, in so far as it requires a proper instrument of transfer, to be duly stamped and executed by or on behalf of the transfer or and by or on behalf of the transferee, shall not apply with respect to bonds issued by a Government company, provided that an intimation by the transferee specifying his name, address and occupation, if any, has been delivered to the company along with the certificate relating to the bond; and if no such certificate is in existence, along with the letter of allotment of the bond:  Provided also that the provisions of this sub-section shall not apply to a Government Company in respect of securities held by nominees of the Government.

Sr. No.	Chapter / Section Number / Sub-section(s) in the Companies Act, 2013	Exceptions/Modifications/Adaptations
(1)	(2)	(3)
3.	Chapter VII, section 89.	Shall not apply.
4.	Chapter VII, section 90.	Shall not apply.
5.	Chapter VII, sub-section (2) of section 96.	In sub-section (2), for the words “some other place within the city, town or village in which the registered office of the company is situate”, the words “such other place as the Central Government may approve in this behalf” shall be substituted.
6.	Chapter VIII, second proviso to sub-section (1) of section 123.	Shall not apply to a Government Company in which the entire paid up share capital is held by the Central Government, or by any State Government or Governments or by the Central Government and one or more State Governments.
7.	Chapter VIII, sub-section (4) of section 123.	Shall not apply to a Government Company in which the entire paid up share capital is held by the Central Government, or by any State Government or Governments or by the Central Government and one or more State Governments or by one or more Government Company.
8.	Chapter IX, section 129.	Shall not apply to the extent of application of Accounting Standard 17 (Segment Reporting) to the companies engaged in defence production.
9.	Chapter IX, clause (e) of sub-section (3) of section 134.	Shall not apply.
10.	Chapter IX, clause (p) of sub-section (3) of section 134.	Shall not apply in case the directors are evaluated by the Ministry or Department of the Central Government which is administratively in charge of the company, or, as the case may be, the State Government, as per its own evaluation methodology.
11.	Chapter XI, section 149(1)(b) and first proviso to sub-section (1) of section 149.	Shall not apply.
12.	Chapter XI, clause (a) of sub-section (6) of section 149.	In section 149, in sub-section (6), in clause (a), for the word “Board”, the words “Ministry or Department of the Central Government which is administratively in charge of the company, or, as the case may be, the State Government” shall be substituted.
13.	Chapter XI, clause (c) of sub-section (6) of section 149.	Shall not apply.
14.	Chapter XI, sub-section (5)	Shall not apply where appointment of such director is done by the

Sr. No.	Chapter / Section Number / Sub-section(s) in the Companies Act, 2013	Exceptions/Modifications/Adaptations
(1)	(2)	(3)
	of section 152.	Central Government or State Government, as the case may be.
15.	Chapter XI, sub-sections (6) and (7) of section 152.	Shall not apply to - (a) a Government Company in which the entire paid up share capital is held by the Central Government, or by any State Government or Governments or by the Central Government and one or more State Governments; (b) a subsidiary of a Government company, referred to in (a) above, in which the entire paid up share capital is held by that Government company.
16.	Chapter XI, section 160.	Shall not apply to- (a) a Government Company in which the entire paid up share capital is held by the Central Government, or by any State Government or Governments or by the Central Government and one or more State Governments; (b) a subsidiary of a Government company, referred to in (a) above, in which the entire paid up share capital is held by that Government company.
17.	Chapter XI, section 162.	Shall not apply to — 1. a Government Company in which the entire paid up share capital is held by the Central Government, or by any State Government or Governments or by the Central Government and one or more State Governments; 2. a subsidiary of a Government company, referred to in (a) above, in which the entire paid up share capital is held by that Government company.
18.	Chapter XI, section 163.	Shall not apply to — 1. a Government Company in which the entire paid up share capital is held by the Central Government, or by any State Government or Governments or by the Central Government and one or more State Governments; 2. a subsidiary of a Government company, referred to in (a) above, in which the entire paid up share capital is held by that Government company.
19.	Chapter XI, sub-section (2) of section 164.	Shall not apply.

Sr. No.	Chapter / Section Number / Sub-section(s) in the Companies Act, 2013	Exceptions/Modifications/Adaptations
(1)	(2)	(3)
20.	Chapter XI, section 170.	Shall not apply to a Government Company in which the entire share capital is held by the Central Government, or by any State Government or Governments or by the Central Government or by one or more State Governments.
21.	Chapter XI, section 171	Shall not apply to a Government Company in which the entire share capital is held by the Central Government, or by any State Government or Governments or by the Central Government or by one or more State Governments.
22.	Chapter XII, clause (i) of sub-section (4) of section 177.	In clause (i) of sub-section (4) of the section 177, for the words “recommendation for appointment, remuneration and terms of appointment” the words “recommendation for remuneration” shall be substituted.
23.	Chapter XII, sub-sections (2), (3) and (4) of section 178.	Shall not apply to Government company except with regard to appointment of ‘senior management’ and other employees.
24.	Chapter XII, section 185.	Shall not apply to Government company in case such company obtains approval of the Ministry or Department of the Central Government which is administratively in charge of the company, or, as the case may be, the State Government before making any loan or giving any guarantee or providing any security under the section.
25.	Chapter XII, section 186.	Shall not apply to - (a) a Government company engaged in defence production; (b) a Government company, other than a listed company, in case such company obtains approval of the Ministry or Department of the Central Government which is administratively in charge of the company, or, as the case may be, the State Government before making any loan or giving any guarantee or providing any security or making any investment under the section.
26.	Chapter XII, first and second proviso to sub-section (1) of section 188.	Shall not apply to — 1. a Government company in respect of contracts or arrangements entered into by it with any other Government company; 2. a Government company, other than a listed company, in respect of contracts or arrangements other than those referred to in clause (a), in case such company obtains approval of the Ministry or Department of the Central Government which is administratively in charge of the company, or, as the case may

Sr. No.	Chapter / Section Number / Sub-section(s) in the Companies Act, 2013	Exceptions/Modifications/Adaptations
(1)	(2)	(3)
		be, the State Government before entering into such contract or arrangement.
27.	Chapter XIII, sub-sections (2), (4) and (5) of section 196.	Shall not apply.
28.	Chapter XIII, section 197	Shall not apply.
29.	Chapter XIII, sub-sections (1), (2), (3) and (4) of section 203.	After sub-section (4), the following sub-section shall be inserted, namely:-  “(4A) The provisions of sub-sections (1), (2), (3) and (4) of this section shall not apply to a managing director or Chief Executive Officer or manager and in their absence, a whole time director of the Government Company.”
30.	Chapter XXIX, sub-section (2) of section 439.	In sub-section (2). the words “the Registrar, a shareholder of the company, or of’ shall be omitted.

2. The Government companies, while complying with such exceptions, modifications and adaptations, as specified in column (3) of the aforesaid Table, shall ensure that the interests of their shareholders are protected.

3. A copy of this notification has been laid in draft before both Houses of Parliament as required by sub-section (2) of section 462 of the Companies Act, 2013.

[F No.1/2/2014-CL.V]

**Amardeep Singh Bhatia,**  
*Joint Secretary to the Government of India.*

## 2

## TO BE PUBLISHED IN THE GAZETTE OF INDIA, EXTRAORDINARY, PART II

## SECTION 3, SUB-SECTION (i)]

## GOVERNMENT OF INDIA

## MINISTRY OF CORPORATE AFFAIRS

## NOTIFICATION

New Delhi, the 5th June, 2015

**G.S.R. 464(E).** - In exercise of the powers conferred by clauses (a) and (b) of sub-section (1) of section 462 and in pursuance of sub-section (2) of said section of the Companies Act, 2013 (18 of 2013), the Central Government, in the interest of public, hereby directs that certain provisions of the Companies Act, 2013, as specified in column (2) of the Table, shall not apply or shall apply with such exceptions, modifications and adaptations, as specified in column (3) of the said Table, to a private company, namely:-

<i>Sr. No.</i>	<i>Chapter / Section Number / Sub-section(s) in the Companies Act, 2013</i>	<i>Exceptions/Modifications/Adaptations</i>
(1)	(2)	(3)
1.	Chapter I, sub-clause (viii) of clause (76) of section 2.	Shall not apply with respect to section 188.
2.	Chapter IV, section 43 and section 47.	Shall not apply where memorandum or articles of association of the private company so provides.
3.	Chapter IV, sub-clause (i) of clause (a) of sub-section (1) and sub-section (2) of section 62.	Shall apply with following modifications:-  In clause (a), in sub-clause (i), the following proviso shall be inserted, namely:-  Provided that notwithstanding anything contained in this sub-clause and sub-section (2) of this section, in case ninety per cent, of the members of a private company have given their consent in writing or in electronic mode, the periods lesser than those specified in the said sub-clause or sub-section shall apply.
4.	Chapter IV, clause (b) of sub-section (1) of section 62.	In clause (b), for the words "special resolution", the words "ordinary resolution" shall be substituted.
5.	Chapter IV, section 67.	Shall not apply to private companies -

Sr. No.	Chapter / Section Number / Sub-section(s) in the Companies Act, 2013	Exceptions/Modifications/Adaptations
(1)	(2)	(3)
		<p>a. in whose share capital no other body corporate has invested any money;</p> <p>b. if the borrowings of such a company from banks or financial institutions or any body corporate is less than twice its paid up share capital or fifty crore rupees, whichever is lower; and</p> <p>c. such a company is not in default in repayment of such borrowings subsisting at the time of making transactions under this section.</p>
6.	Chapter V, clauses (a) to (e) of subsection (2) of section 73.	Shall not apply to a private company which accepts from its members monies not exceeding one hundred per cent, of aggregate of the paid up share capital and free reserves, and such company shall file the details of monies so accepted to the Registrar in such manner as may be specified.
7.	Chapter VII, sections 101 to 107 and section 109.	Shall apply unless otherwise specified in respective sections or the articles of the company provide otherwise.
8.	Chapter VII, clause (g) of sub-section (3) of section 117.	Shall not apply.
9.	Chapter X, Clause (g) of sub-section (3) of section 141.	Shall apply with the modification that the words "other than one person companies, dormant companies, small companies and private companies having paid-up share capital less than one hundred crore rupees" shall be inserted after the words "twenty companies".
10.	Chapter XI, section 160.	Shall not apply.
11.	Chapter XI, section 162.	Shall not apply.
12.	Chapter XII, section 180.	Shall not apply.
13.	Chapter XII, sub-section (2) of section 184.	Shall apply with the exception that the interested director may participate in such meeting after disclosure of his interest.
14.	Chapter XII, section 185.	<p>Shall not apply to a private company -</p> <p>a. in whose share capital no other body corporate has invested any money;</p> <p>b. if the borrowings of such a company from banks or financial institutions or any body corporate is less than twice of its paid up share capital or fifty crore rupees, whichever is lower; and</p> <p>c. such a company has no default in repayment of such borrowings subsisting at the time of making transactions under this section.</p>



Sr. No.	Chapter / Section Number / Sub-section(s) in the Companies Act, 2013	Exceptions/Modifications/Adaptations
(1)	(2)	(3)
15.	Chapter XII, second proviso to subsection (1) of section 188.	Shall not apply.
16.	Chapter XIII, sub-sections (4) and (5) of section 196.	Shall not apply.

2. The private companies, while complying with such exceptions, modifications and adaptations, as specified in column (3) of the aforesaid Table, shall ensure that the interests of their shareholders are protected.

3. A copy of this notification has been laid in draft before both Houses of Parliament as required by sub-section (2) of section 462 of the Companies Act, 2013.

[F No.1/1/2014-CL.V]

**Amardeep Singh Bhatia,**  
Joint Secretary to the Government of India.

## 3

[TO BE PUBLISHED IN THE GAZETTE OF INDIA, EXTRAORDINARY, PART II

SECTION 3, SUB-SECTION (i)]

GOVERNMENT OF INDIA

MINISTRY OF CORPORATE AFFAIRS

NOTIFICATION

New Delhi, the 5th June, 2015

**G.S.R. 465(E).** - In exercise of the powers conferred by clauses (a) and (b) of sub-section (1) of section 462 read with section 406 of the Companies Act, 2013 (18 of 2013) and in supersession of notification number GSR 517(E), dated the 31st August, 2006 and GSR 326(E), dated the 8th April, 2011 or any other notification issued under section 620A of the Companies Act, 1956, except as respects things done or omitted to be done before such supersession, the Central Government in the interest of public, hereby directs that certain provisions of the Companies Act, 2013, as specified in column (2) of the Table, shall not apply or shall apply with such exceptions, modifications and adaptations, as specified in column (3) of the said Table, to Nidhis, namely:-

<i>Sr. No.</i>	<i>Chapter / Section Number / Sub-section(s) in the Companies Act, 2013</i>	<i>Exceptions/Modifications/Adaptations</i>
<i>(1)</i>	<i>(2)</i>	<i>(3)</i>
1.	Sub-section (2) of section 20	Shall apply subject to the modification that in the case of a Nidhi, the document may be served only on members who hold shares of more than one thousand rupees in face value or more than one per cent, of the total paid-up share capital of the Nidhis whichever is less.  For other shareholders, document may be served by a public notice in newspaper circulated in the district where the Registered Office of the Nidhi is situated; and publication of the same on the notice board of the Nidhi.
2.	Section 42 except sub-section (1), explanation (II) to sub-section (2), sub-sections (4), (6), (8), (9) and (10)	Shall not apply.
3.	Clause (b) of sub-section (1) of section 47	Shall apply, subject to the modification that no member shall exercise voting rights on poll in excess of five per cent, of total voting rights of equity shareholders.

Sr. No.	Chapter / Section Number / Sub-section(s) in the Companies Act, 2013	Exceptions/Modifications/Adaptations
(1)	(2)	(3)
4.	Section 62	Shall not apply.
5.	Sub-section (1) of section 67	Shall not apply, when shares are purchased by the company from a member on his ceasing to be a depositor or borrower and it shall not be considered as reduction of capital under section 66 of the Companies Act, 2013.
6.	Sub-section (5) of Section 123	Shall apply, subject to the modification that any dividend payable in cash may be paid by crediting the same to the account of the member, if the dividend is not claimed within 30 days from the date of declaration of the dividend.
7.	Section 127	Shall apply, subject to the modification that where the dividend payable to a member is one hundred rupees or less, it shall be sufficient compliance of the provisions of the section, if the declaration of dividend is announced in the local language in one local newspaper of wide circulation and announcement of the said declaration is also displayed on the notice board of the Nidhis for at least three months.
8.	Sub-section (1) of Section 136	Shall apply, subject to the modification that, in the case of members who do not individually or jointly hold shares of more than one thousand rupees in face value or more than one per cent, of the total paid-up share capital whichever is less, it shall be sufficient compliance with the provisions of the section if an intimation is sent by public notice in newspaper circulated in the district in which the Registered Office of the Nidhi is situated stating the date, time and venue of Annual General Meeting and the financial statement with its enclosures can be inspected at the registered office of the company, and the financial statement with enclosures are affixed in the Notice Board of the company and a member is entitled to vote either in person or through proxy.
9.	Section 160	In sub-section (1), for the words “one lakh rupees”, the words “ten thousand rupees” shall be substituted.
10.	Section 185	Shall not apply, provided the loan is given to a director or his relative in their capacity as members and such transaction is disclosed in the annual accounts by a note.
11.	Second proviso to sub-section (1) of section 197	Shall apply with the modification that the remuneration of a director who is neither managing director nor whole time director or manager for performing special services to the Nidhis specified in the articles of association may be paid by way of monthly payment subject to the approval of the company in general meeting and also to the provisions of section 197 :

Sr. No.	Chapter / Section Number / Sub-section(s) in the Companies Act, 2013	Exceptions/Modifications/Adaptations
(1)	(2)	(3)
		<p>Provided that no approval of the company in general meeting shall be required where,—</p> <ol style="list-style-type: none"> <li>1. a Nidhi does not have a managing director or a whole-time director or a manager;</li> <li>2. the remuneration payable during a financial year to all the directors of the Nidhi does not exceed ten per cent, of the net profits of such Nidhi or fifteen lakh rupees, whichever is less; and</li> <li>3. a remuneration payable under clause (b) is approved by a special resolution passed in this behalf by the Nidhi.</li> </ol>
12.	Section 403	Shall apply, with the modification that the filing fees in respect of every return of allotment under sub-section (9) of section 42 shall be calculated at the rate of one rupee for every one hundred rupees or parts thereof on the face value of the shares included in the return but shall not exceed the amount of normal filing fee payable.

2. The Nidhis, while complying with such exceptions, modifications and adaptations, as specified in column (3) of the aforesaid Table, shall ensure that the interests of their shareholders are protected.

3. A copy of this notification has been laid in draft before both Houses of Parliament as required by sub-section (2) of section 462 of the Companies Act, 2013.

[F No.2/11/2014-CL.V]

**Amardeep Singh Bhatia,**  
Joint Secretary to the Government of India.

## 4

[TO BE PUBLISHED IN THE GAZETTE OF INDIA, EXTRAORDINARY

PART II, SECTION 3, SUB-SECTION (i)]

GOVERNMENT OF INDIA

MINISTRY OF CORPORATE AFFAIRS

NOTIFICATION

New Delhi, the 5th June, 2015

**G.S.R. 466(E).** - In exercise of the powers conferred by clauses (a) and (b) of sub-section (1) of Section 462 and in pursuance of sub-section (2) of said section of the Companies Act, 2013 (18 of 2013) and in supersession of notifications issued under section 25 of the Companies Act, 1956 (1 of 1956) except as respect things done or omitted to be done before such supersession, the Central Government, in the interest of public, hereby directs that certain provisions of the Companies Act, 2013, as specified in column (2) of the Table, shall not apply or shall apply with such exceptions, modifications and adaptations, as specified in column (3) of the said Table, to a body to which a licence is granted under the provisions of the aforesaid, Section 8, namely:-

<i>Sr. No.</i>	<i>Chapter / Section Number / Sub-section(s) in the Companies Act, 2013</i>	<i>Exceptions/Modifications/Adaptations</i>
(1)	(2)	(3)
1.	Clause (24) of section 2.	The provisions of clause (24) of section 2 shall not apply.
2.	'Clause (68) of section 2.	The requirement of having minimum paid-up share capital shall not apply.
3.	Clause (71) of section 2.	The requirement of having minimum paid-up share capital shall not apply.
4.	Sub-section (2) of section 96.	In sub-section (2), after the proviso and before the explanation, the following proviso shall be inserted, namely:-  Provided further that the time, date and place of each annual general meeting are decided upon before-hand by the board of directors having regard to the directions, if any, given in this regard by the company in its general meeting.
5.	Sub-section (1) of section 101.	In sub-section (1), for the words "twenty one days", the words "fourteen days" shall be substituted.
6.	Section 118.	The section shall not apply as a whole except that minutes may be

Sr. No.	Chapter / Section Number / Sub-section(s) in the Companies Act, 2013	Exceptions/Modifications/Adaptations
(1)	(2)	(3)
		recorded within thirty days of the conclusion of every meeting in case of companies where the articles of association provide for confirmation of minutes by circulation.
7.	Sub-section (1) of section 136.	In sub-section (1), for the words "twenty one days", the words "fourteen days" shall be substituted.
8.	Sub-section (1) of section 149 and the first proviso to sub-section (1).	Shall not apply.
9.	Sub-sections (4), (5), (6), (7), (8), (9), (10), (11), clause (i) of sub-section (12) and subsection (13) of section 149.	Shall not apply.
10.	Section 150.	Shall not apply.
11.	Proviso to sub-section (5) of section 152.	Shall not apply.
12.	Section 160.	Shall not apply to companies whose articles provide for election of directors by ballot.
13.	Sub-section (1) of section 165.	Shall not apply.
14.	Sub-section (1) of section 173.	Shall apply only to the extent that the Board of Directors, of such Companies shall hold at least one meeting within every six calendar months.
15.	Sub-section (1) of section 174.	<p>In sub-section (1),—</p> <p>a. for the words "one-third of its total strength or two directors, whichever is higher", the words "either eight members or twenty five per cent, of its total strength whichever is less" shall be substituted;</p> <p>b. the following proviso shall be inserted, namely:-</p> <p>"Provided that the quorum shall not be less than two members".</p>
16.	Sub-section (2) of section 177.	The words "with independent directors forming a majority" shall be omitted.
17.	Section 178.	Shall not apply.

Sr. No.	Chapter / Section Number / Sub-section(s) in the Companies Act, 2013	Exceptions/Modifications/Adaptations
(1)	(2)	(3)
18.	Section 179.	Matters referred to in clauses (d), (e) and (f) of sub-section (3) may be decided by the Board by circulation instead of at a meeting.
19.	Sub-section (2) of section 184.	Shall apply only if the transaction with reference to section 188 on the basis of terms and conditions of the contract or arrangement exceeds one lakh rupees.
20.	Section 189.	Shall apply only if the transaction with reference to section 188 on the basis of terms and conditions of the contract or arrangement exceeds one lakh rupees.

2. The companies covered under section 8 of the Companies Act, 2013, while complying with such exceptions, modifications and adaptations, as specified in column (3) of the aforesaid Table, shall ensure that the interests of their shareholders are protected.

3. A copy of this notification has been laid in draft before both Houses of Parliament as required by sub-section (2) of section 462 of the Companies Act, 2013.

[F No.1/2/2014-CL.V]

**Amardeep Singh Bhatia,**  
Joint Secretary to the Government of India

# OTHERS

**So far the following Circulars, Notifications, Orders and Amendment Rules have been issued under this chapter:**

1. The Company Law Board (Fees on Application and Petition) Amendment Rules, 2014 dated 3rd November, 2014.
2. General Circular No.32/2014 dated 23rd July, 2014 on the subject clarification on transitional period for resolutions passed under the Companies Act, 1956.
3. Companies (Miscellaneous) Amendment Rules, 2014 dated 17th July, 2014 on the subject the Central Government inserted rule 11 after rule 10 to the Companies (Miscellaneous) Rules, 2014.



1

**MINISTRY OF CORPORATE AFFAIRS****NOTIFICATION****New Delhi, the 3rd November, 2014**

**G.S.R. 772(E).**—In exercise of the powers conferred by section 642 read with sub-section (2) of section 637A of the Companies Act, 1956 (1 of 1956) and the removal of difficulty Orders issued by the Central Government under section 470 of the Companies Act, 2013, the Central Government hereby makes the following rules further to amend the Company Law Board (Fees on Applications and Petitions) Rules, 1991 namely:-

1. (1) These rules may be called the Company Law Board (Fees on Applications and Petitions) Amendment Rules, 2014.

(2) They shall come into force on the date of their publication in the Official Gazette.

2. In the Company Law Board (Fees on Applications and Petitions) Rules, 1991, in the Schedule, after serial number 33 the following shall be inserted, namely:

“34	2(41) of the Companies Act, 2013 April to March as financial year.	Allowing any period other than	5,000
35	58 and 59 of the Companies Act, 2013	Rectification of register of members	500
36	73(4) of the Companies Act, 2013 read with section 76 incurred as a result of such non- payment.	Directing the company to pay the sum due or for any loss or damage	100
37	74(2) of the Companies Act, 2013 reasonable to the company to repay the deposit.	Allow further time as considered	5,000”

[F. No. 1/19/2014-CL-V]

**AMARDEEP SINGH BHATIA***Jt. Secy.*

*Note:* The Principal Notification was published vide No: GSR 290(E) dated 31.5.1991 and subsequently amended by:

Serial Number	Notification Number	Notification Date
1.	GSR 787(E)	29-9-1992
2.	GSR 219(E)	6-3-2000
3.	GSR 510(E)	22-7-2002
4.	GSR 547(E)	10-7-2012

**2****General Circular No. 32/2014****No.1/25/13-CL-V****Government of India****Ministry of Corporate Affairs**5th Floor, A Wing, Shastri Bhavan  
Dr R.P. Road, New Delhi.

Dated: - 23rd July, 2014

To

All Regional Directors

All Registrars of Companies

All Stakeholders

**Subject: Clarification on transitional period for resolutions passed under the Companies Act, 1956.**

Sir,

It has been brought to the notice of the Government that many companies have passed resolutions during financial year 2013-14 under the relevant provisions of the Companies Act, 1956 (Old Act) which are/were at different stages of implementation after coming into force of corresponding provisions of the new Companies Act, 2013 (New Act). Ministry has received suggestions that while section 6 of the General Clauses Act, 1897 protects the validity of such resolutions, it will be advisable if a suitable communication is also issued in the matter by the Ministry by way of abundant caution

2. The matter has been examined in the light of similar issues clarified earlier. It is clarified that resolutions approved or passed by companies under relevant applicable provisions of the Old Act during the period from 1st September, 2013 to 31st March, 2014, can be implemented, in accordance with provisions of the Old Act, notwithstanding the repeal of the relevant provision subject to the conditions (a) that the implementation of the resolution actually commenced before 1st April, 2014 and (b) that this transitional arrangement will be available upto expiry of one year from the passing of the resolution or six months from the commencement of the corresponding provision in New Act whichever is later. It is also clarified that any amendment of the resolution must be in accordance with the relevant provision of the New Act.

This issues with the approval of the competent authority.

Yours faithfully

Sd/-

**(KMS Narayanan)**Assistant *Director* (Policy)

23387263

Copy to:-

1. e-Governance Section and web contents Officer to place this circular on the Ministry website
2. Guard File

**3****.MINISTRY OF CORPORATE AFFAIRS****NOTIFICATION****New Delhi, the 17th July, 2014**

**G.S.R. 506(E).** – In exercise of the powers conferred by sub-section (1) of section 469 of the Companies Act, 2013 (18 of 2013), the Central Government hereby makes the following rules to amend the Companies (Miscellaneous) Rules, 2014, namely:–

1. (1) These rules may be called the Companies (Miscellaneous) Amendment Rules, 2014.

(2) They shall come into force from the date of their publication in the Official Gazette.

2. In the Companies (Miscellaneous) Rules, 2014 after rule 10, the following rule shall be inserted, namely :—

“11. *Applications or forms pending before Central Government, Regional Director or Registrar of Companies.*— Any application or form filed with the Central Government or Regional Director or Registrar (hereinafter referred to as ‘the authority’) prior to the commencement of these rules but not disposed of by such authority for want of any information or document shall, on its submission, to the satisfaction of the authority, be disposed of in accordance with the rules made under the Companies Act, 1956 (1 of 1956).”

[F. No. 1/25/2013-CL-V]

**AMARDEEP SINGH BHATIA**

*Jt. Secy.*

*Note :* The principal rules were published in the Gazette of India, Extraordinary, Part-II, Section 3, Sub-section (i), vide number G.S.R 253 (E), dated the 31st March, 2014.

# Schedule II

The schedule deals with computation of depreciation.

So far following notifications have been issued in order to amend the schedule:

1. Notification G.S.R. 237(E) dated 31st March, 2014
2. Notification G.S.R. 627(E) dated 29th August, 2014

1

## MINISTRY OF CORPORATE AFFAIRS

### NOTIFICATION

New Delhi, the 31st March, 2014

**G.S.R.. 237 (E).**—In exercise of the powers conferred by sub-section (2) of Section 123 read with sub-sections (1) of Section 467 of the Companies Act, 2013 (18 of 2013), the Central Government hereby makes the following alterations to Schedule II to the said Act, namely:—

#### 1. In Schedule II,—

(1) in Part 'A', in Para 3, for sub-paragraphs (i) to (iii), the following sub-paragraphs shall be substituted, namely:-

“10 The useful life of an asset shall not be longer than the useful life specified in Part ‘C and the residual value of an asset shall not be more than five per cent of the original cost of the asset:

Provided that where a company uses a useful life or residual value of the asset which is different from the above limits, justification for the difference shall be disclosed in its financial statement,

“(ii) For intangible assets, the provisions of the accounting standards applicable for the time being in force shall apply, except in case of intangible assets (Toll Roads) created under “Build, Operate and Transfer”, ‘Build, Own, Operate and Transfer” or any other form of public private partnership route in case of road projects. Amortisation in such cases may be done as follows:-

Projected Revenue from Intangible Asset (till the end of the concession period) (C)

#### (a) **Mode of amortization**

$$\text{Amortisation Rate} = \frac{\text{Amortisation Amount}}{\text{Cost of Intangible Assets (A)}} \times 100$$

$$= \frac{\text{Amortisation Amount}}{\text{Cost of Intangible Assets (A)}} \times \frac{\text{Actual Revenue for the year (B)}}{\text{Projected Revenue from Intangible Asset (till the end of the concession period)(C)}} \times 100$$

**(b) Meaning of particulars are as follows :**

Cost of Intangible Assets (A)	=	Cost incurred by the company in accordance with the accounting standards.
Actual Revenue for the year (B)	=	Actual revenue (Toll Charges) received during the accounting year.
Projected Revenue from Intangible = Asset (C)	=	Total projected revenue from the Intangible Assets as provided to the project lender at the time of financial closure /agreement.

The amortisation amount or rate should ensure that the whole of the cost of the intangible asset is amortised over the concession period.

Revenue shall be reviewed at the end of each financial year and projected revenue shall be adjusted to reflect such changes, if any, in the estimates as will lead to the actual collection at the end of the concession period.

**(c) Example:—**

Cost of creation of Intangible Assets	:	Rs. 500 Crores
Total period of Agreement	:	20 Years
Time used for creation of Intangible Assets	:	2 Years
Intangible Assets to be amortised in	:	18 Years

Assuming that the Total revenue to be generated out of Intangible Assets over the period would be Rs. 600 Crores, in the following manner:—

<i>Year No.</i>	<i>Revenue (In Rs. Crores)</i>	<i>Remarks</i>
Year 1	5	Actual
Year 2	7.5	Estimate
Year 3	10	Estimate
Year 4	12.5	Estimate
Year 5	17.5	Estimate
Year 6	20	Estimate
Year 7	23	Estimate
Year 8	27	Estimate
Year 9	31	Estimate
Year 10	34.	Estimate
Year 11	38	Estimate
Year 12	41	Estimate
Year 13	46	Estimate

Year 14	50	Estimate
Year 15	53	Estimate
Year 16	57	Estimate
Year 17	60	Estimate *
Year 18	67.5	Estimate *
Total	600	

\*' will be actual at the end of financial year.

Based on this the charge for first year would be Rs. 4.16 Crore (approximately) (i.e. Rs. 5/Rs. 600 x Rs. 500 Crores) which would be charged to profit and loss and 0.83% (i.e. Rs. 4.16 Crore/ Rs. 500 Crore x 100) is the amortisation rate for the first year.

Where a company arrives at the amortisation amount in respect of the said Intangible Assets in accordance with any method as per the applicable Accounting Standards, it shall disclose the same".

(2) in Part 'C', in Para 5, in item IV. in sub-item (i), for clause (b), the following clause shall be substituted, namely:—

"(b) Continuous process plant for which no special rate has been prescribed 25 years". Under (ii) below [NESD]

(3) Under the heading 'Notes', appearing after Part "C' paragraph 5 shall be omitted.

2. "This notification shall come into force with effect from 01 April, 2014.

[F. No. 17/60/2012-CL-V]

Sd/-

**RENUKA KUMAR**

*Jt. Secy*

**2****MINISTRY OF CORPORATE AFFAIRS****NOTIFICATION****New Delhi, the 29th August, 2014**

**G.S.R.627(E).**- In exercise of the powers conferred by sub section (1) of section 467 of the Companies Act, 2013 (18 of 2013), the Central Government hereby makes the following amendments further to amend Schedule II of the said Act with effect from the date of publication of this notification in the Official Gazette, namely:-

1. In Schedule II of the Companies Act, 2013,-

(a) in Part 'A', in paragraph 3, for sub- paragraph (i), the following sub-paragraph shall be substituted, namely:-

“(i) The useful life of an asset shall not ordinarily be different from the useful life specified in Part C and the residual value of an asset shall not be more than five percent. of the original cost of the asset:

Provided that where a company adopts a useful life different from what is specified in Part C or uses a residual value different from the limit specified above, the financial statements shall disclose such difference and provide justification in this behalf duly supported by technical advice”.

(b) after Part 'C', under the heading Notes,-

(i) for paragraph 4 the following paragraph shall be substituted namely:-

“4(a) Useful life specified in Part C of the Schedule is for whole of the asset and where cost of a part of the asset is significant to total cost of the asset and useful life of that part is different from the useful life of the remaining asset, useful life of that significant part shall be determined separately.

(b) The requirement under sub- paragraph (a) shall be voluntary in respect of the financial year commencing on or after the 1st April, 2014 and mandatory for financial statements in respect of financial years commencing on or after the 1st April, 2015.”

(c) in paragraph 7, in sub-paragraph (b) for the words “shall be recognized”, the words “may be recognized” shall be substituted.

[F.NO. A- 17/60/2012- CL-V]

**AMARDEEP S. BHATIA**

*Jt. Secy.*

*Note* : Schedule II of the Companies Act, 2013 came into force with effect from the 1st April, 2014 and was amended (with effect from 1st April, 2014) vide notification S.O. 237(E), dated the 31st March, 2014.

# Schedule V

This schedule relates to the conditions to be fulfilled for the appointment of Director

So far the following clarification has been issued:

1. General Circular No. 07/2015 dated 10th April, 2015

## **I. Remuneration to managerial person under Schedule XII of the Companies Act, 1956 – Transition Period**

### **Issues Involved**

Whether the listed companies and their subsidiaries paying remuneration, without approval of Central Government, in excess of limits specified in para II Para (C) of Schedule XIII of Companies Act, 1956 to the managerial person can be continued under Companies Act, 2013?

### **Clarification Issued**

Stakeholders have drawn attention to the provisions of Schedule XIII (sixth proviso to Para (C) of Section II of Part II) of the Companies Act, 1956 (Earlier Act) and as clarified vide Circular number 14/11/2012-CL-VII dated 16th August, 2012, which allowed listed companies and their subsidiaries to pay remuneration, without approval of Central Government, in excess of limits specified in para II Para (C) of such Schedule if the managerial person met the conditions specified therein.

Similar provisions are not available in the Schedule V of the Companies Act, 2013, stakeholders sought clarification that a managerial person appointed in accordance with such provision of Schedule XIII of Earlier Act may receive relevant remuneration for the period as approved by the company in accordance with such provisions of Earlier Act.

The Ministry of Corporate Affairs in this regard clarified that a managerial person receiving such remuneration may continue to receive remuneration for his remaining term in accordance with terms and conditions approved by company as per relevant provisions of Schedule XIII of earlier Act even if the part of his/her tenure falls after 1st April, 2014.



**General Circular No. 07/2015****F. No.1/5/2013-CL-V****Government of India****Ministry of Corporate Affairs**5th Floor, A Wing, Shastri Bhavan,  
Dr R.P. Road, New Delhi

Dated: 10th April, 2015

To

All Regional Directors

All Registrars of Companies

All Stakeholders,

***Subject: Remuneration to managerial person under Schedule XIII of the Companies Act, 1956-Clarification with regard to payment for period***

Sir,

1. Stakeholders have drawn attention to the provisions of Schedule XIII (sixth proviso to Para (C) of Section II of Part II) of the Companies Act, 1956 (Earlier Act) and as clarified vide Circular number 14/11/2012-CL-VII dated 16th August, 2012, which allowed listed companies and their subsidiaries to pay remuneration, without approval of Central Government, in excess of limits specified in para II Para (C) of such Schedule if the managerial person met the conditions specified therein. Stakeholders have expressed that since similar provisions are not available in the Schedule V of the Companies Act, 2013, there is a need for a clarification that a managerial person appointed in accordance with such provision of Schedule XIII of Earlier Act may receive relevant remuneration for the period as approved by the company in accordance with such provisions of Earlier Act.

2. The matter has been examined in the light of earlier clarifications on transitional matters issued by the Ministry. It is clarified that a managerial person referred to in para 1 above may continue to receive remuneration for his remaining term in accordance with terms and conditions approved by company as per relevant provisions of Schedule XIII of earlier Act even if the part of his/her tenure falls after 1st April, 2014.

3. This issues with the approval of the competent authority.

Yours faithfully

**(K. M. S.Narayanan)**  
*Assistant Director (Policy)*

23347263

Copy to:-

1. e-Governance Section and web contents Officer to place this circular on the Ministry website
2. Guard File.

# Schedule VII

(See sections 135)

This Schedule covers activities which may be included by companies in their Corporate Social Responsibility Policies.

**So far the following notifications issued for the amendment of Schedule VIII under this chapter:**

1. Notification G.S.R. 130(E) dated 31 st March, 2014
2. Notification G.S.R. 261(E) dated 31 st March, 2014
3. Notification G.S.R. (E) dated 6th August , 2014
4. Notification G.S.R. 741(E) dated 24th October, 2014

**Before amendment Schedule VII read as under**

Activities which may be included by companies in their Corporate Social Responsibility Policies Activities relating to:—

- (i) eradicating extreme hunger and poverty;
- (ii) promotion of education;
- (iii) promoting gender equality and empowering women;
- (iv) reducing child mortality and improving maternal health;
- (v) combating human immunodeficiency virus, acquired immune deficiency syndrome, malaria and other diseases;
- (vi) ensuring environmental sustainability;
- (vii) employment enhancing vocational skills;
- (viii) social business projects;
- (ix) contribution to the Prime Minister's National Relief Fund or any other fund set up by the Central Government or the State Governments for socio-economic development and relief and funds for the welfare of the Scheduled Castes, the Scheduled Tribes, other backward classes, minorities and women; and
- (x) such other matters as may be prescribed.

After amendment Schedule VII read as under:

Activities which may be included by companies in their Corporate Social Responsibility Policies Activities relating to:—

- “(i) eradicating hunger, poverty and malnutrition, promoting health care including preventive health care and

sanitation including contribution to the Swachh Bharat Kosh set-up by the Central Government for the promotion of sanitation and making available safe drinking water:

- (ii) Promoting education, including special education and employment enhancing vocation skills especially among children, women, elderly, and the differently able and livelihood enhancement projects;
- (iii) Promoting gender equality, empowering women, setting up homes and hostels for women and orphans; setting up old age homes, day care centres and such other facilities for senior citizens and measures for reducing inequalities faced by socially and economically backward groups:
- (iv) Ensuring environmental sustainability, ecological balance, protection of flora and fauna, animal welfare, agro forestry, conservation of natural resources and maintaining quality of soil, air and water including contribution to the Clean Ganga Fund setup by the Central Government for rejuvenation of river Ganga;
- (v) Protection of national heritage, art and culture including restoration of buildings and sites of historical importance and works of art; setting up public libraries: promotion and development of traditional arts and handicrafts;
- (vi) Measures for the benefit of armed forces veterans, war widows and their dependents;
- (vii) Training to promote rural sports, nationally recognized sports, Paralympics sports and Olympic sports:
- (viii) Contribution to the Prime Minister's National Relief Fund or any other fund set up by the Central Government for socio-economic development and relief and welfare of the Scheduled Castes, the Scheduled Tribes, other backward classes, minorities and women:
- (ix) Contributions or funds provided to technology incubators located within academic institutions which are approved by the Central Government;
- (x) Rural development projects.
- (xi) slum area development

*Explanation.*—For the purposes of this item, the term ‘slum area’ shall mean any area declared as such by the Central Government or any State Government or any other competent authority under any law for the time being in force.”

The text of the notifications issued under this Chapter appended as under:

1

**MINISTRY OF CORPORATE AFFAIRS**

**NOTIFICATION**

**New Delhi, the 31 st March, 2014**

**G.S.R. 130(E).**— In exercise of the powers conferred by sub-section (1) of section 467 of the Companies Act 2013 (8 of 2013), the Central Government hereby makes the following amendments to Schedule VII of the said Act, namely:

- (l) In Schedule VII. for items (i) to (x) and the entries relating thereto, the following items and entries shall be substituted, namely ;—
- “(i) eradicating hunger, poverty and malnutrition, promoting preventive health care and sanitation and making available safe drinking water:
  - (ii) Promoting education, including special education and employment enhancing vocation skills especially among children, women, elderly, and the differently able and livelihood enhancement projects;
  - (iii) Promoting gender equality, empowering women, setting *up* homes and hostels tor women and orphans; setting up old age homes, day care centres and such other facilities for senior citizens and measures for reducing inequalities faced by socially and economically backward groups:
  - (iv) Ensuring environmental sustainability, ecological balance, protection of flora and fauna, animal welfare, agro forestry, conservation of natural resources and maintaining quality of soil, air and water;
  - (v) Protection of national heritage, art and culture including restoration of buildings and sites of historical importance and works of art; setting up public libraries: promotion and development of traditional arts and handicrafts;
  - (vi) Measures for the benefit of armed forces veterans, war widows and their dependents;
  - (vii) Training to promote rural sports, nationally recognized sports, Paralympics sports and Olympic sports:
  - (viii) Contribution to the Prime Minister’s National Relief Fund or any other fund set up by the Central Government for socio-economic development and relief and welfare of the Scheduled Castes, the Scheduled Tribes, other backward classes, minorities and women:
  - (ix) Contributions or funds provided to technology incubators located within academic institutions which are approved by the Central Government;
  - (x) Rural development projects.

2. This notification shall come into force with effect from 1st April, 2014.

{F. No. 1/18/2013-CL-V}

Sd/-  
**RENUKA KUMAR**  
*Jt. Secy.*

**2****MINISTRY OF CORPORATE AFFAIRS****CORRIGENDA****New Delhi, the 31st March, 2014**

**G.S.R. 261(E).**—In the notification of the Government of India in the Ministry of Corporate Affairs dated the 27th February, 2014 published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide G.S.R. No. 130(E), dated the 28th February, 2014 at page 2, line 20 for “promoting preventive health care” read “promoting health care including preventive health care”.

[F.No. 1/18A/2013-CL.V]

**RENUKA KUMAR**  
*Jt. Secy.*

**3****Ministry of Corporate Affairs****NOTIFICATION****New Delhi, the 6th August, 2014**

**G.S.R.568(E).**—In exercise of the powers conferred by sub-section (1) of section 467 of the Companies Act, 2013 (18 of 2013), the Central Government hereby makes the following further amendments in Schedule VII of the said Act, namely:-

(1) In Schedule VII, after item (x), the following item and entry shall be inserted, namely:

“(xi) slum area development.

*Explanation.*—For the purposes of this item, the term ‘slum area’ shall mean any area declared as such by the Central Government or any State Government or any other competent authority under any law for the time being in force.”

2. This notification shall come into force on the date of its publication in the Official Gazette.

[F.No.1/18/2013-CL-V]

Sd/-

**AMARDEEP S. BHATIA**

*Joint Secretary to the Government of India*

*Note :* The Schedule VII was brought into force with effect from 1st April, 2014 and was amended (effective from 1st April, 2014) vide notification number GSR 130(E) dated 27th February, 2014 and Corrigenda number GSR 261(E) dated 31st March, 2014.

4

**MINISTRY OF CORPORATE AFFAIRS**

**NOTIFICATION**

**New Delhi, the 24th October, 2014**

G.S.R. 741(E).— In exercise of the powers conferred by sub-section (1) of section 467 of the Companies Act, 2013 (18 of 2013), the Central Government hereby makes the following further amendments to Schedule VII of the said Act, namely:—

- (i) In item (i), after the words “and sanitation”, the words “including contribution to the Swach Bharat Kosh set-up by the Central Government for the promotion of sanitation” shall be inserted;
- (ii) In item (iv), after the words “and water”, the words “including contribution to the Clean Ganga Fund setup by the Central Government for rejuvenation of river Ganga;” shall be inserted.

2. This notification shall come into force on the date of its publication in the Official Gazette.

[F. No. 1/18/2013-CL-V]

**AMARDEEP SINGH BHATIA**

Jt. Secy.

**Note :** The Schedule VII was brought into force with effect from 1st April, 2014 and was amended (effective from 1st April, 2014) vide notification number GSR 130(E) dated 27th February, 2014 and Corrigenda number GSR 261(E) dated 31st March, 2014 and also vide amendment notification number GSR 568(E) dated 6th August, 2014.

# SECRETARIAL STANDARD ON MEETINGS OF THE BOARD OF DIRECTORS

The following is the text of the Secretarial Standard-1 (SS-1) on "Meetings of the Board of Directors", issued by the Council of the Institute of Company Secretaries of India and approved by the Central Government.

Adherence by a company to this Secretarial Standard is mandatory, as per the provisions of the Companies Act, 2013.

*(In this Secretarial Standard, the Standard portions have been set in bold type. These shall be read in the context of the background material which has been set in normal. Both the Standard portions and the background material have equal authority).*

## INTRODUCTION

This Standard prescribes a set of principles for convening and conducting Meetings of the Board of Directors and matters related thereto.

## SCOPE

This Standard is applicable to the Meetings of Board of Directors of all companies incorporated under the Act except One Person Company (OPC) in which there is only one Director on its Board. The principles enunciated in this Standard for Meetings of the Board of Directors are also applicable to Meetings of Committee (s) of the Board, unless otherwise stated herein or stipulated by any other applicable Guidelines, Rules or Regulations.

This Standard is in conformity with the provisions of the Act. However, if, due to subsequent changes in the Act, a particular Standard or any part thereof becomes inconsistent with the Act, the provisions of the Act shall prevail.

## DEFINITIONS

The following terms are used in this Standard with the meaning specified:

*"Act"* means the Companies Act, 2013 (Act No. 18 of 2013) or any previous enactment thereof, or any statutory modification thereto or re-enactment thereof and includes any Rules and Regulations framed thereunder.

*"Articles"* means the Articles of Association of a company, as originally framed or as altered from time to time or applied in pursuance of any previous company law or the Companies Act, 2013.

*"Calendar Year"* means calendar year as per Gregorian calendar i.e. a period of one year which begins on 1<sup>st</sup> January and ends on 31<sup>st</sup> December.

*"Chairman"* means the Chairman of the Board or its Committee, as the case may be, or the Chairman appointed or elected for a Meeting.

*"Committee"* means a Committee of Directors constituted by the Board.

“*Electronic Mode*” in relation to Meetings means Meetings through video conferencing or other audio-visual means. “Video conferencing or other audio-visual means” means audio-visual electronic communication facility employed which enables all the persons participating in a Meeting to communicate concurrently with each other without an intermediary and to participate effectively in the Meeting.

“*Invitee*” means a person, other than a Director and Company Secretary, who attends a particular Meeting by invitation.

“*Maintenance*” means keeping of registers and records either in physical or electronic form, as may be permitted under any law for the time being in force, and includes the making of appropriate entries therein, the authentication of such entries and the preservation of such physical or electronic records.

“*Meeting*” means a duly convened, held and conducted Meeting of the Board or any Committee thereof.

“*Minutes*” means a formal written record, in physical or electronic form, of the proceedings of a Meeting.

“*Minutes Book*” means a Book maintained in physical or in electronic form for the purpose of recording of Minutes.

“*National Holiday*” includes Republic Day i.e. 26<sup>th</sup> January, Independence Day i.e. 15<sup>th</sup> August, Gandhi Jayanti i.e. 2<sup>nd</sup> October and such other day as may be declared as National Holiday by the Central Government.

“*Original Director*” means a Director in whose place the Board has appointed any other individual as an Alternate Director.

“*Quorum*” means the minimum number of Directors whose presence is necessary for holding of a Meeting.

“*Secretarial Auditor*” means a Company Secretary in Practice appointed in pursuance of the Act to conduct the secretarial audit of the company.

“*Secured Computer System*” means computer hardware, software, and procedure that –

- (a) are reasonably secure from unauthorized access and misuse;
- (b) provide a reasonable level of reliability and correct operation;
- (c) are reasonably suited to performing the intended functions; and
- (d) adhere to generally accepted security procedures.

“*Timestamp*” means the current time of an event that is recorded by a Secured Computer System and is used to describe the time that is printed to a file or other location to help keep track of when data is added, removed, sent or received.

Words and expressions used and not defined herein shall have the meaning respectively assigned to them under the Act.

## SECRETARIAL STANDARD

### 1. Convening a Meeting

#### 1.1 Authority

- 1.1.1 Any Director of a company may, at any time, summon a Meeting of the Board, and the Company Secretary or where there is no Company Secretary, any person authorised by the Board in this behalf, on the requisition of a Director, shall convene a Meeting of the**



**Board, in consultation with the Chairman or in his absence, the Managing Director or in his absence, the Whole-time Director, where there is any, unless otherwise provided in the Articles.**

**1.1.2 The Chairman may, unless dissented to or objected by the majority of Directors present at a Meeting at which a Quorum is present, adjourn the Meeting for any reason, at any stage of the Meeting.**

## **1.2 Time, Place, Mode and Serial Number of Meeting**

**1.2.1 Every Meeting shall have a serial number.**

**1.2.2 A Meeting may be convened at any time and place, on any day, excluding a National Holiday.**

Notice of the Meeting, wherein the facility of participation through Electronic Mode is provided, shall clearly mention a venue, whether registered office or otherwise, to be the venue of the Meeting and it shall be the place where all the recordings of the proceedings at the Meeting would be made.

A Meeting adjourned for want of Quorum shall also not be held on a National Holiday.

**1.2.3 Any Director may participate through Electronic Mode in a Meeting, if the company provides such facility, unless the Act or any other law specifically does not allow such participation through Electronic Mode in respect of any item of business.**

Directors shall not participate through Electronic Mode in the discussion on certain restricted items, unless expressly permitted by the Chairman. Such restricted items of business include approval of the annual financial statement, Board's report, prospectus and matters relating to amalgamation, merger, demerger, acquisition and takeover. Similarly, participation in the discussion through Electronic Mode shall not be allowed in Meetings of the Audit Committee for consideration of annual financial statement including consolidated financial statement, if any, to be approved by the Board, unless expressly permitted by the Chairman.

## **1.3 Notice**

**1.3.1 Notice in writing of every Meeting shall be given to every Director by hand or by speed post or by registered post or by courier or by facsimile or by e-mail or by any other electronic means.**

The Notice shall be sent to the postal address or e-mail address, registered by the Director with the company or in the absence of such details or any change thereto, any of such addresses appearing in the Director Identification Number (DIN) registration of the Director.

Where a Director specifies a particular means of delivery of Notice, the Notice shall be given to him by such means.

Proof of sending Notice and its delivery shall be maintained by the company.

**1.3.2 Notice shall be issued by the Company Secretary or where there is no Company Secretary, any Director or any other person authorised by the Board for the purpose.**

**1.3.3 The Notice shall specify the serial number, day, date, time and full address of the venue of the Meeting.**

**1.3.4 In case the facility of participation through Electronic Mode is being made available, the Notice shall inform the Directors about the availability of such facility, and provide them necessary information to avail such facility.**

Where such facility is provided, the Notice shall seek advance confirmation from the Directors as to whether they will participate through Electronic Mode in the Meeting.

The Notice shall also contain the contact number or e-mail address (es) of the Chairman or the Company Secretary or any other person authorised by the Board, to whom the Director shall confirm in this regard. In the absence of an advance communication or confirmation from the Director as above, it shall be assumed that he will attend the Meeting physically.

**1.3.5 The Notice of a Meeting shall be given even if Meetings are held on pre-determined dates or at pre-determined intervals.**

**1.3.6 Notice convening a Meeting shall be given at least seven days before the date of the Meeting, unless the Articles prescribe a longer period.**

In case the company sends the Notice by speed post or by registered post or by courier, an additional two days shall be added for the service of Notice.

Notice of an adjourned Meeting shall be given to all Directors including those who did not attend the Meeting on the originally convened date and unless the date of adjourned Meeting is decided at the Meeting, Notice thereof shall also be given not less than seven days before the Meeting.

**1.3.7 The Agenda, setting out the business to be transacted at the Meeting, and Notes on Agenda shall be given to the Directors at least seven days before the date of the Meeting, unless the Articles prescribe a longer period.**

Agenda and Notes on Agenda shall be sent to all Directors by hand or by speed post or by registered post or by courier or by e-mail or by any other electronic means. These shall be sent to the postal address or e-mail address or any other electronic address registered by the Director with the company or in the absence of such details or any change thereto, to any of such addresses appearing in the Director Identification Number (DIN) registration of the Directors.

In case the company sends the Agenda and Notes on Agenda by speed post or by registered post or by courier, an additional two days shall be added for the service of Agenda and Notes on Agenda.

Where a Director specifies a particular means of delivery of Agenda and Notes on Agenda, these papers shall be sent to him by such means.

Proof of sending Agenda and Notes on Agenda and their delivery shall be maintained by the company.

The Notice, Agenda and Notes on Agenda shall be sent to the Original Director also at the address registered with the company, even if these have been sent to the Alternate Director.

Notes on items of business which are in the nature of Unpublished Price Sensitive Information may be given at a shorter period of time than stated above, with the consent of a majority of the Directors, which shall include at least one Independent Director, if any.

For this purpose,

“unpublished price sensitive information” means any information, relating to a company or its securities, directly or indirectly, that is not generally available, which upon becoming generally available, is likely to materially affect the price of the securities and shall, ordinarily including but not restricted to, information relating to the following: –

- (i) financial results;

- (ii) dividends;
- (iii) change in capital structure;
- (iv) mergers, de-mergers, acquisitions, delistings, disposals and expansion of business and such other transactions;
- (v) changes in key managerial personnel; and
- (vi) material events in accordance with the listing agreement\*.

General consent for giving Notes on items of Agenda which are in the nature of Unpublished Price Sensitive Information at a shorter Notice may be taken in the first Meeting of the Board held in each financial year and also whenever there is any change in Directors.

Where general consent as above has not been taken, the requisite consent shall be taken before the concerned items are taken up for consideration at the Meeting. The fact of consent having been taken shall be recorded in the Minutes.

Supplementary Notes on any of the Agenda Items may be circulated at or prior to the Meeting but shall be taken up with the permission of the Chairman and with the consent of a majority of the Directors present in the Meeting, which shall include at least one Independent Director, if any.

**1.3.8 Each item of business requiring approval at the Meeting shall be supported by a note setting out the details of the proposal, relevant material facts that enable the Directors to understand the meaning, scope and implications of the proposal and the nature of concern or interest, if any, of any Director in the proposal, which the Director had earlier disclosed.**

Where approval by means of a Resolution is required, the draft of such Resolution shall be either set out in the note or placed at the Meeting.

The items of business that are required by the Act or any other applicable law to be considered at a Meeting of the Board shall be placed before the Board at its Meeting. An illustrative list of such items is given at Annexure 'A'.

There are certain items which shall be placed before the Board at its first Meeting. An illustrative list thereof is given at Annexure 'B'.

**1.3.9 Each item of business to be taken up at the Meeting shall be serially numbered.**

Numbering shall be in a manner which would enable ease of reference or cross-reference.

**1.3.10 Any item not included in the Agenda may be taken up for consideration with the permission of the Chairman and with the consent of a majority of the Directors present in the Meeting, which shall include at least one Independent Director, if any.**

In case of absence of Independent Directors, if any, at such Meeting, the Minutes shall be final only after at least one Independent Director, if any, ratifies the decision taken in respect of such item. In case the company does not have an Independent Director, the Minutes shall be final only on ratification of the decision taken in respect of such item by a majority of the Directors of the company, unless such item was approved at the Meeting itself by a majority of Directors of the company.

**1.3.11 To transact urgent business, the Notice, Agenda and Notes on Agenda may be given at shorter period of time than stated above, if at least one Independent Director, if any, shall be present at such Meeting. If no Independent Director is present, decisions taken**

**at such a Meeting shall be circulated to all the Directors and shall be final only on ratification thereof by at least one Independent Director, if any. In case the company does not have an Independent Director, the decisions shall be final only on ratification thereof by a majority of the Directors of the company, unless such decisions were approved at the Meeting itself by a majority of Directors of the company.**

The fact that the Meeting is being held at a shorter Notice shall be stated in the Notice.

## **2. Frequency of Meetings**

### **2.1 Meetings of the Board**

**The Board shall meet at least once in every calendar quarter, with a maximum interval of one hundred and twenty days between any two consecutive Meetings of the Board, such that at least four Meetings are held in each Calendar Year.**

The Board shall hold its first Meeting within thirty days of the date of incorporation of the company. It shall be sufficient if one Meeting is held in each of the remaining calendar quarters, subject to a maximum interval of one hundred and twenty days between any two consecutive Meetings of the Board, after the first Meeting.

Further, it shall be sufficient if a One Person Company, Small Company or Dormant Company holds one Meeting of the Board in each half of a calendar year and the gap between the two Meetings of the Board is not less than ninety days.

An adjourned Meeting being a continuation of the original Meeting, the interval period in such a case, shall be counted from the date of the original Meeting.

### **2.2 Meetings of Committees**

**Committees shall meet as often as necessary subject to the minimum number and frequency stipulated by the Board or as prescribed by any law or authority.**

### **2.3 Meeting of Independent Directors**

**Where a company is required to appoint Independent Directors under the Act, such Independent Directors shall meet at least once in a Calendar Year.**

The meeting shall be held to review the performance of Non-Independent Directors and the Board as a whole; to review the performance of the Chairman and to assess the quality, quantity and timeliness of flow of information between the company management and the Board and its members that is necessary for the Board to effectively and reasonably perform their duties.

The Company Secretary shall facilitate convening and holding of such meeting, if so desired by the Independent Directors.

## **3. Quorum**

### **3.1 Quorum shall be present throughout the Meeting.**

**Quorum shall be present not only at the time of commencement of the Meeting but also while transacting business.**

### **3.2 A Director shall not be reckoned for Quorum in respect of an item in which he is interested and he shall not be present, whether physically or through Electronic Mode, during discussions and voting on such item.**

For this purpose, a Director shall be treated as interested in a contract or arrangement entered into or proposed to be entered into by the company:

- (a) with the Director himself or his relative; or
- (b) with any body corporate, if such Director, along with other Directors holds more than two percent of the paid-up share capital of that body corporate, or he is a promoter, or manager or chief executive officer of that body corporate; or
- (c) with a firm or other entity, if such Director or his relative is a partner, owner or Member, as the case may be, of that firm or other entity.

**3.3 Directors participating through Electronic Mode in a Meeting shall be counted for the purpose of Quorum, unless they are to be excluded for any items of business under the provisions of the Act or any other law.**

Any Director participating through Electronic Mode in respect of restricted items with the express permission of Chairman shall however, neither be entitled to vote nor be counted for the purpose of Quorum in respect of such restricted items.

The restricted items of business include approval of the annual financial statement, Board's Report, prospectus and matters relating to amalgamation, merger, demerger, acquisition and takeover and in meetings of Audit Committee for the consideration of annual financial statement including consolidated financial statement, if any, to be approved by the Board.

**3.4 Meetings of the Board**

**3.4.1 The Quorum for a Meeting of the Board shall be one-third of the total strength of the Board, or two Directors, whichever is higher.**

Any fraction contained in the above one-third shall be rounded off to the next one.

Where the Quorum requirement provided in the Articles is higher than one-third of the total strength, the company shall conform to such higher requirement.

Total strength for this purpose, shall not include Directors whose places are vacant.

If the number of Interested Directors exceeds or is equal to two-thirds of the total strength, the remaining Directors present at the Meeting, being not less than two, shall be the Quorum during such item.

If a Meeting of the Board could not be held for want of Quorum, then, unless otherwise provided in the Articles, the Meeting shall automatically stand adjourned to the same day in the next week, at the same time and place or, if that day is a National Holiday, to the next succeeding day which is not a National Holiday, at the same time and place.

If there is no Quorum at the adjourned Meeting also, the Meeting shall stand cancelled.

**3.4.2 Where the number of Directors is reduced below the minimum fixed by the Articles, no business shall be transacted unless the number is first made up by the remaining Director(s) or through a general meeting.**

If the number of Directors is reduced below the Quorum fixed by the Act for a Meeting of the Board, the continuing Directors may act for the purpose of increasing the number of Directors to that fixed for the Quorum or of summoning a general meeting of the company, and for no other purpose.

### **3.5 Meetings of Committees**

**The presence of all the members of any Committee constituted by the Board is necessary to form the Quorum for Meetings of such Committee unless otherwise stipulated in the Act or any other law or the Articles or by the Board.**

Regulations framed under any other law may contain provisions for the Quorum of a Committee and such stipulations shall be followed.

## **4. Attendance at Meetings**

### **4.1 Attendance registers**

**4.1.1 Every company shall maintain separate attendance registers for the Meetings of the Board and Meetings of the Committee.**

The pages of the respective attendance registers shall be serially numbered.

If an attendance register is maintained in loose-leaf form, it shall be bound periodically depending on the size and volume.

**4.1.2 The attendance register shall contain the following particulars: serial number and date of the Meeting; in case of a Committee Meeting name of the Committee; place of the Meeting; time of the Meeting; names of the Directors and signature of each Director present; name and signature of the Company Secretary who is in attendance and also of persons attending the Meeting by invitation.**

**4.1.3 Every Director, Company Secretary who is in attendance and every Invitee who attends a Meeting of the Board or Committee thereof shall sign the attendance register at that Meeting.**

In case of Directors participating through Electronic Mode, the Chairman shall confirm the attendance of such Directors. For this purpose, at the commencement of the Meeting, the Chairman shall take a roll call. The Chairman or Company Secretary shall request the Director participating through Electronic Mode to state his full name and location from where he is participating and shall record the same in the Minutes. The proceedings of such Meetings shall be recorded through any electronic recording mechanism and the details of the venue, date and time shall be mentioned.

The attendance register shall be deemed to have been signed by the Directors participating through Electronic Mode, if their attendance is recorded by the Chairman or the Company Secretary in the Attendance Register and the Minutes of the Meeting.

**4.1.4 The attendance register shall be maintained at the Registered Office of the company or such other place as may be approved by the Board.**

The attendance register may be taken to any place where a Meeting of the Board or Committee is held.

**4.1.5 The attendance register is open for inspection by the Directors.**

The Company Secretary in Practice appointed by the company or the Secretarial Auditor or the Statutory Auditor of the company can also inspect the attendance register as he may consider necessary for the performance of his duties.

A Member of the company is not entitled to inspect the attendance register.

**4.1.6 Entries in the attendance register shall be authenticated by the Company Secretary or where there is no Company Secretary, by the Chairman by appending his signature to each page.**

**4.1.7 The attendance register shall be preserved for a period of at least eight financial years and may be destroyed thereafter with the approval of the Board.**

The recording of attendance of Meetings through Electronic Mode shall be preserved for a period of at least eight financial years and may be destroyed thereafter with the approval of the Board.

**4.1.8 The attendance register shall be kept in the custody of the Company Secretary.**

Where there is no Company Secretary, the attendance register shall be kept in the custody of any Director authorised by the Board for this purpose.

**4.2 Leave of absence shall be granted to a Director only when a request for such leave has been received by the Company Secretary or by the Chairman.**

The office of a Director shall become vacant in case the Director absents himself from all the Meetings of the Board held during a period of twelve months with or without seeking leave of absence of the Board.

## **5. Chairman**

### **5.1 Meetings of the Board**

**5.1.1 The Chairman of the company shall be the Chairman of the Board. If the company does not have a Chairman, the Directors may elect one of themselves to be the Chairman of the Board.**

**5.1.2 The Chairman of the Board shall conduct the Meetings of the Board. If no Chairman is elected or if the Chairman is unable to attend the Meeting, the Directors present at the Meeting shall elect one of themselves to chair and conduct the Meeting, unless otherwise provided in the Articles.**

It would be the duty of the Chairman to check, with the assistance of Company Secretary, that the Meeting is duly convened and constituted in accordance with the Act or any other applicable guidelines, Rules and Regulations before proceeding to transact business. The Chairman shall then conduct the Meeting. The Chairman shall encourage deliberations and debate and assess the sense of the Meeting.

If the Chairman is interested in any item of business, he shall, with the consent of the members present, entrust the conduct of the proceedings in respect of such item to any Dis-interested Director and resume the Chair after that item of business has been transacted. The Chairman shall also not be present at the Meeting during discussions on such items.

In case some of the Directors participate through Electronic Mode, the Chairman and the Company Secretary shall safeguard the integrity of the Meeting by ensuring sufficient security and identification procedures. No person other than the Director concerned shall be allowed access to the proceedings of the Meeting where Director (s) participate through Electronic Mode, except a Director who is differently abled, provided such Director requests the Board to allow a person to accompany him and ensures that such person maintains confidentiality of the matters discussed at the Meeting.

Unless otherwise provided in the Articles, in case of an equality of votes, the Chairman shall have a second or casting vote.

## 5.2 *Meetings of Committees*

**A member of the Committee appointed by the Board or elected by the Committee as Chairman of the Committee, in accordance with the Act or any other law or the Articles, shall conduct the Meetings of the Committee. If no Chairman has been so elected or if the elected Chairman is unable to attend the Meeting, the Committee shall elect one of its members present to chair and conduct the Meeting of the Committee, unless otherwise provided in the Articles.**

## 6. Passing of Resolution by Circulation

The Act requires certain business to be approved only at Meetings of the Board. However, other business that requires urgent decisions can be approved by means of Resolutions passed by circulation. Resolutions passed by circulation are deemed to be passed at a duly convened Meeting of the Board and have equal authority.

### 6.1. Authority

**6.1.1 The Chairman of the Board or in his absence, the Managing Director or in his absence, the Whole-time Director and where there is none, any Director other than an Interested Director, shall decide, before the draft Resolution is circulated to all the Directors, whether the approval of the Board for a particular business shall be obtained by means of a Resolution by circulation.**

An illustrative list of items which shall be placed before the Board at its Meeting and shall not be passed by circulation is given at Annexure 'A'.

**6.1.2 Where not less than one-third of the total number of Directors for the time being require the Resolution under circulation to be decided at a Meeting, the Chairman shall put the Resolution for consideration at a Meeting of the Board.**

Interested Directors shall not be excluded for the purpose of determining the above one-third of the total number of Directors.

### 6.2. Procedure

**6.2.1 A Resolution proposed to be passed by circulation shall be sent in draft, together with the necessary papers, individually to all the Directors including Interested Directors on the same day.**

**6.2.2 The draft of the Resolution to be passed and the necessary papers shall be circulated amongst the Directors by hand, or by speed post or by registered post or by courier, or by e-mail or by any other recognised electronic means.**

The draft of the Resolution and the necessary papers shall be sent to the postal address or e-mail address registered by the Director with the company or in the absence of such details or any change thereto, any of the addresses appearing in the Director Identification Number (DIN) registration of the Director.

Proof of sending and delivery of the draft of the Resolution and the necessary papers shall be maintained by the company.

**6.2.3 Each business proposed to be passed by way of Resolution by circulation shall be explained by a note setting out the details of the proposal, relevant material facts that enable the Directors to understand the meaning, scope and implications of the proposal, the nature of concern or interest, if any, of any Director in the proposal, which the Director had earlier disclosed and the draft of the Resolution proposed. The note shall**



**also indicate how a Director shall signify assent or dissent to the Resolution proposed and the date by which the Director shall respond.**

Each Resolution shall be separately explained.

The decision of the Directors shall be sought for each Resolution separately.

Not more than seven days from the date of circulation of the draft of the Resolution shall be given to the Directors to respond and the last date shall be computed accordingly.

### **6.3. Approval**

**6.3.1 The Resolution is passed when it is approved by a majority of the Directors entitled to vote on the Resolution, unless not less than one-third of the total number of Directors for the time being require the Resolution under circulation to be decided at a Meeting.**

Every such Resolution shall carry a serial number.

If any special majority or the affirmative vote of any particular Director or Directors is specified in the Articles, the Resolution shall be passed only with the assent of such special majority or such affirmative vote.

An Interested Director shall not be entitled to vote. For this purpose, a Director shall be treated as interested in a contract or arrangement entered or proposed to be entered into by the company:

- (a) with the Director himself or his relative; or
- (b) with any body corporate, if such Director, along with other Directors holds more than two percent of the paid-up share capital of that body corporate, or he is a promoter, or manager or chief executive officer of that body corporate; or
- (c) with a firm or other entity, if such Director or his relative is a partner, owner or Member, as the case may be, of that firm or other entity.

**6.3.2 The Resolution, if passed, shall be deemed to have been passed on the last date specified for signifying assent or dissent by the Directors or the date on which assent from more than two-third of the Directors has been received, whichever is earlier, and shall be effective from that date, if no other effective date is specified in such Resolution.**

Directors shall signify their assent or dissent by signing the Resolution to be passed by circulation or by e-mail or any other electronic means.

Directors shall append the date on which they have signed the Resolution. In case a Director does not append a date, the date of receipt by the company of the signed Resolution shall be taken as the date of signing.

In cases where the interest of a Director is yet to be communicated to the company, the concerned Director shall disclose his interest before the last date specified for the response and abstain from voting.

In case not less than one-third of the Directors wish the matter to be discussed and decided at a Meeting, each of the concerned Directors shall communicate the same before the last date specified for the response.

In case the Director does not respond on or before the last date specified for signifying assent or dissent, it shall be presumed that the Director has abstained from voting.

If the approval of the majority of Directors entitled to vote is not received by the last date specified for receipt of such approval, the Resolution shall be considered as not passed.

#### 6.4. Recording

**Resolutions passed by circulation shall be noted at the next Meeting of the Board and the text thereof with dissent or abstention, if any, shall be recorded in the Minutes of such Meeting.**

Minutes shall also record the fact that the Interested Director did not vote on the Resolution.

#### 6.5. Validity

**Passing of Resolution by circulation shall be considered valid as if it had been passed at a duly convened Meeting of the Board.**

This shall not dispense with the requirement for the Board to meet at the specified frequency.

### 7. Minutes

Every company shall keep Minutes of all Board and Committee Meetings in a Minutes Book. Minutes kept in accordance with the provisions of the Act evidence the proceedings recorded therein. Minutes help in understanding the deliberations and decisions taken at the Meeting.

#### 7.1. Maintenance of Minutes

**7.1.1 Minutes shall be recorded in books maintained for that purpose.**

**7.1.2 A distinct Minutes Book shall be maintained for Meetings of the Board and each of its Committees.**

**7.1.3 Minutes may be maintained in electronic form in such manner as prescribed under the Act and as may be decided by the Board. Minutes in electronic form shall be maintained with Timestamp.**

A company may maintain its Minutes in physical or in electronic form with Timestamp.

Every company shall however follow a uniform and consistent form of maintaining the Minutes. Any deviation in such form of maintenance shall be authorised by the Board.

**7.1.4 The pages of the Minutes Books shall be consecutively numbered.**

This shall be followed irrespective of a break in the Book arising out of periodical binding in case the Minutes are maintained in physical form. This shall be equally applicable for maintenance of Minutes Book in electronic form with Timestamp.

In the event any page or part thereof in the Minutes Book is left blank, it shall be scored out and initialled by the Chairman who signs the Minutes.

**7.1.5 Minutes shall not be pasted or attached to the Minutes Book, or tampered with in any manner.**

**7.1.6 Minutes of the Board Meetings, if maintained in loose-leaf form, shall be bound periodically depending on the size and volume and coinciding with one or more financial years of the company.**

There shall be a proper locking device to ensure security and proper control to prevent removal or manipulation of the loose leaves.

**7.1.7 Minutes of the Board Meeting shall be kept at the Registered Office of the company or at such other place as may be approved by the Board.**

## **7.2. Contents of Minutes**

### **7.2.1 General Contents**

#### **7.2.1.1 Minutes shall state, at the beginning the serial number and type of the Meeting, name of the company, day, date, venue and time of commencement and conclusion of the Meeting.**

In case a Meeting is adjourned, the Minutes shall be entered in respect of the original Meeting as well as the adjourned Meeting. In respect of a Meeting convened but adjourned for want of quorum, a statement to that effect shall be recorded by the Chairman or any Director present at the Meeting in the Minutes.

#### **7.2.1.2 Minutes shall record the names of the Directors present physically or through Electronic Mode, the Company Secretary who is in attendance at the Meeting and Invitees, if any, including Invitees for specific items.**

The names of the Directors shall be listed in alphabetical order or in any other logical manner, but in either case starting with the name of the person in the Chair.

The capacity in which an Invitee attends the Meeting and where applicable, the name of the entity such Invitee represents and the relation, if any, of that entity to the company shall also be recorded.

#### **7.2.1.3 Minutes shall contain a record of all appointments made at the Meeting.**

Where the Minutes have been kept in accordance with the Act and all appointments have been recorded, then until the contrary is proved, all appointments of Directors, First Auditors, Key Managerial Personnel, Secretarial Auditors, Internal Auditors and Cost Auditors, shall be deemed to have been duly approved by the Board. All appointments made one level below Key Managerial Personnel shall be noted by the Board.

### **7.2.2 Specific Contents**

#### **7.2.2.1 Minutes shall *inter-alia* contain:**

- (a) Record of election, if any, of the Chairman of the Meeting.**
- (b) Record of presence of Quorum.**
- (c) The names of Directors who sought and were granted leave of absence.**
- (d) The mode of attendance of every Director whether physically or through Electronic Mode.**
- (e) In case of a Director participating through Electronic Mode, his particulars, the location from where and the Agenda items in which he participated.**
- (f) The name of Company Secretary who is in attendance and Invitees, if any, for specific items and mode of their attendance if through Electronic Mode.**
- (g) Noting of the Minutes of the preceding Meeting.**
- (h) Noting the Minutes of the Meetings of the Committees.**
- (i) The text of the Resolution(s) passed by circulation since the last Meeting, including dissent or abstention, if any.**
- (j) The fact that an Interested Director was not present during the discussion and did not vote.**

- (k) **The views of the Directors particularly the Independent Director, if specifically insisted upon by such Directors, provided these, in the opinion of the Chairman, are not defamatory of any person, not irrelevant or immaterial to the proceedings or not detrimental to the interests of the company.**
- (l) **If any Director has participated only for a part of the Meeting, the Agenda items in which he did not participate.**
- (m) **The fact of the dissent and the name of the Director who dissented from the Resolution or abstained from voting thereon.**
- (n) **Ratification by Independent Director or majority of Directors, as the case may be, in case of Meetings held at a shorter Notice and the transacting of any item other than those included in the Agenda.**
- (o) **The time of commencement and conclusion of the Meeting.**

**7.2.2.2. Apart from the Resolution or the decision, Minutes shall mention the brief background of all proposals and summarise the deliberations thereof. In case of major decisions, the rationale thereof shall also be mentioned.**

The decisions shall be recorded in the form of Resolutions, where it is statutorily or otherwise required. In other cases, the decisions can be recorded in a narrative form.

Where a Resolution was passed pursuant to the Chairman of the Meeting exercising his second or casting vote, the Minutes shall record such fact.

### **7.3. Recording of Minutes**

#### **7.3.1 Minutes shall contain a fair and correct summary of the proceedings of the Meeting.**

The Company Secretary shall record the proceedings of the Meetings. Where there is no Company Secretary, any other person duly authorised by the Board or by the Chairman in this behalf shall record the proceedings.

The Chairman shall ensure that the proceedings of the Meeting are correctly recorded.

The Chairman has absolute discretion to exclude from the Minutes, matters which in his opinion are or could reasonably be regarded as defamatory of any person, irrelevant or immaterial to the proceedings or which are detrimental to the interests of the company.

#### **7.3.2 Minutes shall be written in clear, concise and plain language.**

Minutes shall be written in third person and past tense. Resolutions shall however be written in present tense.

Minutes need not be an exact transcript of the proceedings at the Meeting.

In case any Director requires his views or opinion on a particular item to be recorded verbatim in the Minutes, the decision of the Chairman whether or not to do so shall be final.

#### **7.3.3 Any document, report or notes placed before the Board and referred to in the Minutes shall be identified by initialling of such document, report or notes by the Company Secretary or the Chairman.**

Wherever any approval of the Board is taken on the basis of certain papers laid before the Board, proper identification shall be made by initialling of such papers by the Company Secretary or the Chairman and a reference thereto shall be made in the Minutes.

**7.3.4 Where any earlier Resolution (s) or decision is superseded or modified, Minutes shall contain a reference to such earlier Resolution (s) or decision.**

**7.3.5 Minutes of the preceding Meeting shall be noted at a Meeting of the Board held immediately following the date of entry of such Minutes in the Minutes Book.**

Minutes of the Meetings of any Committee shall be noted at a Meeting of the Board held immediately following the date of entry of such Minutes in the Minutes Book.

#### **7.4. Finalisation of Minutes**

**Within fifteen days from the date of the conclusion of the Meeting of the Board or the Committee, the draft Minutes thereof shall be circulated by hand or by speed post or by registered post or by courier or by e-mail or by any other recognised electronic means to all the members of the Board or the Committee for their comments.**

Where a Director specifies a particular means of delivery of draft Minutes, these shall be sent to him by such means.

If the draft Minutes are sent by speed post or by registered post or by courier, an additional two days may be added for delivery of the draft Minutes.

Proof of sending draft Minutes and its delivery shall be maintained by the company.

The Directors, whether present at the Meeting or not, shall communicate their comments, if any, in writing on the draft Minutes within seven days from the date of circulation thereof, so that the Minutes are finalised and entered in the Minutes Book within the specified time limit of thirty days.

If any Director communicates his comments after the expiry of the said period of seven days, the Chairman shall have the discretion to consider such comments.

In the event a Director does not comment on the draft Minutes, the draft Minutes shall be deemed to have been approved by such Director.

A Director, who ceases to be a Director after a Meeting of the Board is entitled to receive the draft Minutes of that particular Meeting and to offer comments thereon, irrespective of whether he attended such Meeting or not.

#### **7.5. Entry in the Minutes Book**

**7.5.1 Minutes shall be entered in the Minutes Book within thirty days from the date of conclusion of the Meeting.**

In case a Meeting is adjourned, the Minutes in respect of the original Meeting as well as the adjourned Meeting shall be entered in the Minutes Book within thirty days from the date of the respective Meetings.

**7.5.2 The date of entry of the Minutes in the Minutes Book shall be recorded by the Company Secretary.**

Where there is no Company Secretary, it shall be entered by any other person duly authorised by the Board or by the Chairman.

**7.5.3 Minutes, once entered in the Minutes Book, shall not be altered. Any alteration in the Minutes as entered shall be made only by way of express approval of the Board at its subsequent Meeting in which such Minutes are sought to be altered.**

#### **7.6. Signing and Dating of Minutes**

**7.6.1 Minutes of the Meeting of the Board shall be signed and dated by the Chairman of the Meeting or by the Chairman of the next Meeting.**

Minutes of the previous Meeting may be signed either by the Chairman of such Meeting at any time before the next Meeting is held or by the Chairman of the next Meeting at the next Meeting.

**7.6.2 The Chairman shall initial each page of the Minutes, sign the last page and append to such signature the date on which and the place where he has signed the Minutes.**

Any blank space in a page between the conclusion of the Minutes and signature of the Chairman shall be scored out.

If the Minutes are maintained in electronic form, the Chairman shall sign the Minutes digitally.

**7.6.3 Minutes, once signed by the Chairman, shall not be altered, save as mentioned in this Standard.**

**7.6.4 A copy of the signed Minutes certified by the Company Secretary or where there is no Company Secretary, by any Director authorised by the Board shall be circulated to all Directors within fifteen days after these are signed.**

**7.7. Inspection and Extracts of Minutes**

**7.7.1 The Minutes of Meetings of the Board and any Committee thereof can be inspected by the Directors.**

A Director is entitled to inspect the Minutes of a Meeting held before the period of his Directorship.

A Director is entitled to inspect the Minutes of the Meetings held during the period of his Directorship, even after he ceases to be a Director.

The Company Secretary in Practice appointed by the company, the Secretarial Auditor, the Statutory Auditor, the Cost Auditor or the Internal Auditor of the company can inspect the Minutes as he may consider necessary for the performance of his duties.

Inspection of Minutes Book may be provided in physical or in electronic form.

While providing inspection of Minutes Book, the Company Secretary or the official of the company authorised by the Company Secretary to facilitate inspection shall take all precautions to ensure that the Minutes Book is not mutilated or in any way tampered with by the person inspecting.

A Member of the company is not entitled to inspect the Minutes of Meetings of the Board.

**7.7.2 Extracts of the Minutes shall be given only after the Minutes have been duly entered in the Minutes Book. However, certified copies of any Resolution passed at a Meeting may be issued even earlier, if the text of that Resolution had been placed at the Meeting.**

A Director is entitled to receive, a copy of the Minutes of a Meeting held before the period of his Directorship.

A Director is entitled to receive a copy of the signed Minutes of a Meeting held during the period of his Directorship, even if he ceases to be a Director.

Extracts of the duly signed Minutes may be provided in physical or electronic form.

**8. Preservation of Minutes and other Records**

**8.1 Minutes of all Meetings shall be preserved permanently in physical or in electronic form with Timestamp.**

Where, under a scheme of arrangement, a company has been merged or amalgamated with another company, Minutes of all Meetings of the transferor company, as handed over to the transferee company, shall be preserved permanently by the transferee company, notwithstanding that the transferor company might have been dissolved.

**8.2 Office copies of Notices, Agenda, Notes on Agenda and other related papers shall be preserved in good order in physical or in electronic form for as long as they remain current or for eight financial years, whichever is later and may be destroyed thereafter with the approval of the Board.**

Office copies of Notices, Agenda, Notes on Agenda and other related papers of the transferor company, as handed over to the transferee company, shall be preserved in good order in physical or electronic form for as long as they remain current or for eight financial years, whichever is later and may be destroyed thereafter with the approval of the Board and permission of the Central Government, where applicable.

**8.3 Minutes Books shall be kept in the custody of the Company Secretary.**

Where there is no Company Secretary, Minutes shall be kept in the custody of any Director duly authorised for the purpose by the Board.

## **9. Disclosure**

**The Annual Report and Annual Return of a company shall disclose the number and dates of Meetings of the Board and Committees held during the financial year indicating the number of Meetings attended by each Director.**

## **EFFECTIVE DATE**

This Standard shall come into effect from 1st July, 2015

*Annexure 'A'*  
*(Para 1.3.8)*

**Illustrative list of items of business which shall not be passed by circulation and shall be placed before the Board at its Meeting**

*General Business Items*

- Noting Minutes of Meetings of Audit Committee and other Committees.
- Approving financial statements and the Board's Report.
- Considering the Compliance Certificate to ensure compliance with the provisions of all the laws applicable to the company.
- Specifying list of laws applicable specifically to the company.
- Appointment of Secretarial Auditors and Internal Auditors.

*Specific Items*

- Borrowing money otherwise than by issue of debentures.
- Investing the funds of the company.
- Granting loans or giving guarantee or providing security in respect of loans.
- Making political contributions.
- Making calls on shareholders in respect of money unpaid on their shares.
- Approving Remuneration of Managing Director, Whole-time Director and Manager .
- Appointment or Removal of Key Managerial Personnel.
- Appointment of a person as a Managing Director / Manager in more than one company.
- According sanction for related party transactions which are not in the ordinary course of business or which are not on arm's length basis.
- Purchase and Sale of subsidiaries/assets which are not in the normal course of business.
- Approve Payment to Director for loss of office.
- Items arising out of separate meeting of the Independent Directors if so decided by the Independent Directors.

*Corporate Actions*

- Authorise Buy Back of securities
- Issue of securities, including debentures, whether in or outside India.
- Approving amalgamation, merger or reconstruction.
- Diversify the business.
- Takeover another company or acquiring controlling or substantial stake in another company.

*Additional list of items in case of listed companies*

- Approving Annual operating plans and budgets.
- Capital budgets and any updates.



- Information on remuneration of KMP.
- Show cause, demand, prosecution notices and penalty notices which are materially important.
- Fatal or serious accidents, dangerous occurrences, any material effluent or pollution problems.
- Any material default in financial obligations to and by the company, or substantial non-payment for goods sold by the company.
- Any issue, which involves possible public or product liability claims of substantial nature, including any judgement or order which, may have passed strictures on the conduct of the company or taken an adverse view regarding another enterprise that can have negative implications on the company.
- Details of any joint venture or collaboration agreement.
- Transactions that involve substantial payment towards goodwill, brand equity, or intellectual property.
- Significant labour problems and their proposed solutions. Any significant development in Human Resources/ Industrial Relations front like signing of wage agreement, implementation of Voluntary Retirement Scheme etc.
- Quarterly details of foreign exchange exposures and the steps taken by management to limit the risks of adverse exchange rate movement, if material.
- Non-compliance of any regulatory, statutory or listing requirements and shareholder services such as non-payment of dividend, delay in share transfer etc.

*Annexure 'B'*  
*(Para 1.3.8)*

**Illustrative list of items of business for the Agenda for the First Meeting of the Board of the Company**

1. To appoint the Chairman of the Meeting.
2. To note the Certificate of Incorporation of the company, issued by the Registrar of Companies.
3. To take note of the Memorandum and Articles of Association of the company, as registered.
4. To note the situation of the Registered Office of the company and ratify the registered document of the title of the premises of the registered office in the name of the company or a Notarised copy of lease / rent agreement in the name of the company.
5. To note the first Directors of the company.
6. To read and record the Notices of disclosure of interest given by the Directors.
7. To consider appointment of Additional Directors.
8. To consider appointment of the Chairman of the Board.
9. To consider appointment of the first Auditors.
10. To adopt the Common Seal of the company.
11. To appoint Bankers and to open bank accounts of the company.
12. To authorise printing of share certificates and correspondence with the depositories, if any.
13. To authorise the issue of share certificates to the subscribers to the Memorandum and Articles of Association of the company.
14. To approve and ratify preliminary expenses and preliminary agreements.
15. To approve the appointment of the Key Managerial Personnel, if applicable and other senior officers.
16. To authorise Director(s) of the company to file a declaration with the ROC for commencement of business.

# SECRETARIAL STANDARD ON GENERAL MEETINGS

Following is the text of the Secretarial Standard-2 (SS-2) on “General Meetings”, issued by the Council of the Institute of Company Secretaries of India and approved by the Central Government.

Adherence by a company to this Secretarial Standard is mandatory, as per the provisions of the Companies Act, 2013.

*(In this Secretarial Standard, the Standard portions have been set in bold type. These shall be read in the context of the background material which has been set in normal type. Both the Standard portions and the background material have equal authority).*

## INTRODUCTION

This Standard seeks to prescribe a set of principles for the convening and conducting of General Meetings and matters related thereto.

This Standard also deals with conduct of e-voting and postal ballot.

## SCOPE

This Standard is applicable to all types of General Meetings of all companies incorporated under the Act except One Person Company (OPC) and class or classes of companies which are exempted by the Central Government through notification. The principles enunciated in this Standard for General Meetings of Members are applicable *mutatis-mutandis* to Meetings of debenture-holders and creditors. A Meeting of the Members or class of Members or debenture-holders or creditors of a company under the directions of the Court or the Company Law Board (CLB) or the National Company Law Tribunal (NCLT) or any other prescribed authority shall be governed by this Standard without prejudice to any rules, regulations and directions prescribed for and orders of, such courts, judicial forums and other authorities with respect to the conduct of such Meetings.

This Standard is in conformity with the provisions of the Act. However, if, due to subsequent changes in the Act, a particular Standard or any part thereof becomes inconsistent with the Act, the provisions of the Act shall prevail.

## DEFINITIONS

The following terms are used in this Standard with the meaning specified:

“Act” means the Companies Act, 2013 (Act No. 18 of 2013) or any previous enactment thereof, or any statutory modification thereto or re-enactment thereof and includes any Rules and Regulations framed thereunder.

“Agency” means agency approved or recognised by the Ministry of Corporate Affairs and appointed by the Board for providing and supervising electronic platform for voting.

“*Articles*” means the Articles of Association of a company, as originally framed or as altered from time to time or applied in pursuance of any previous company law or the Companies Act, 2013.

“*Calendar Year*” means calendar year as per Gregorian calendar, i.e., a period of one year which begins on 1<sup>st</sup> January and ends on 31<sup>st</sup> December.

“*Chairman*” means the Chairman of the Board or the Chairman appointed or elected for a Meeting.

“*Maintenance*” means keeping registers and records either in physical or electronic form, as may be permitted under any law for the time being in force, and includes the making of necessary entries therein, the authentication of such entries and the preservation of such physical or electronic records.

“*Meeting*” or “*General Meeting*” or “*Annual General Meeting*” or “*Extra-Ordinary General Meeting*” means a duly convened, held and conducted Meeting of Members.

“*Minutes*” means a formal written record, in physical or electronic form, of the proceedings of a Meeting.

“*Minutes Book*” means a Book maintained in physical or in electronic form for the purpose of recording of Minutes.

“*National Holiday*” includes Republic Day, i.e., 26<sup>th</sup> January, Independence Day, i.e., 15<sup>th</sup> August, Gandhi Jayanti, i.e., 2<sup>nd</sup> October and such other day as may be declared as National Holiday by the Central Government.

“*Ordinary Business*” means business to be transacted at an Annual General Meeting relating to (i) the consideration of financial statements, consolidated financial statements, if any, and the reports of the Board of Directors and Auditors; (ii) the declaration of any dividend; (iii) the appointment of Directors in the place of those retiring; and (iv) the appointment or ratification thereof and fixing of remuneration of the Auditors.

“*Proxy*” means an instrument in writing signed by a Member, authorising another person, whether a Member or not, to attend and vote on his behalf at a Meeting and also where the context so requires, the person so appointed by a Member.

“*Quorum*” means the minimum number of Members whose presence is necessary for holding of a Meeting.

“*Remote e-voting*” means the facility of casting votes by a member using an electronic voting system from a place other than venue of a general meeting.

“*Secretarial Auditor*” means a Company Secretary in Practice appointed in pursuance of the Act to conduct the secretarial audit of the company.

“*Secured Computer System*” means computer hardware, software, and procedure that –

- (a) are reasonably secure from unauthorized access and misuse;
- (b) provide a reasonable level of reliability and correct operation;
- (c) are reasonably suited to performing the intended functions; and
- (d) adhere to generally accepted security procedures.

“*Special Business*” means business other than the Ordinary Business to be transacted at an Annual General Meeting and all business to be transacted at any other General Meeting.

“*Timestamp*” means the current time of an event that is recorded by a Secured Computer System and is used to describe the time that is printed to a file or other location to help keep track of when data is added, removed, sent or received.

“*Voting by electronic means*” includes “remote e-voting” and voting at the general meeting through an electronic voting system which may be the same as used for remote e-voting.

“*Voting by postal ballot*” means voting by ballot, by post or by electronic means.

“*Voting Right*” means the right of a Member to vote on any matter at a Meeting of Members or by means of e-voting or postal or physical ballot;

Words and expressions used and not defined herein shall have the meanings respectively assigned to them under the Act.

## SECRETARIAL STANDARD

### 1. Convening a Meeting

#### 1.1 Authority

**A General Meeting shall be convened by or on the authority of the Board.**

The Board shall, every year, convene or authorise convening of a Meeting of its Members called the Annual General Meeting to transact items of Ordinary Business specifically required to be transacted at an Annual General Meeting as well as Special Business, if any. If the Board fails to convene its Annual General Meeting in any year, any Member of the company may approach the prescribed authority, which may then direct the calling of the Annual General Meeting of the company.

The Board may also, whenever it deems fit, call an Extra-ordinary General Meeting of the company.

The Board shall, on the requisition of Members who hold, as on the date of the receipt of a valid requisition,

- (a) in the case of company having a share capital, not less than one-tenth of the paid-up share capital carrying Voting Rights or
- (b) in the case of a company not having share capital, not less than one-tenth of total voting power of the company,

call an Extra-ordinary General Meeting of the company.

If, on receipt of a valid requisition having been made in this behalf, the Board, within twenty-one days from the date of such receipt, fails to call a Meeting on any day within forty-five days from the date of receipt of such requisition, the requisitionists may themselves call and hold the Meeting within three months from the date of requisition, in the same manner in which the Board should have called and held the Meeting.

Explanatory statement need not be annexed to the Notice of an Extra-ordinary General Meeting convened by the requisitionists and the requisitionists may disclose the reasons for the Resolution(s) which they propose to move at the Meeting.

Such requisition shall not pertain to any item of business that is required to be transacted mandatorily through postal ballot.

#### 1.2 Notice

- 1.2.1 **Notice in writing of every Meeting shall be given to every Member of the company. Such Notice shall also be given to the Directors and Auditors of the company, to the Secretarial Auditor, to Debenture Trustees, if any, and, wherever applicable or so required, to other specified persons.**

In the case of Members, Notice shall be given at the address registered with the Company or depository. In the case of shares or other securities held jointly by two or more persons, the Notice shall be given to the person whose name appears first as per records of the Company or the depository, as the case may be. In the case of any other person who is entitled to receive Notice, the same shall be given to such person at the address provided by him.

Where the company has received intimation of death of a Member, the Notice of Meeting shall be sent as under:

- (a) where securities are held singly, to the Nominee of the single holder;
- (b) where securities are held by more than one person jointly and any joint holder dies, to the surviving first joint holder;
- (c) where securities are held by more than one person jointly and all the joint holders die, to the Nominee appointed by all the joint holders;

In the absence of a Nominee, the Notice shall be sent to the legal representative of the deceased Member.

In case of insolvency of a Member, the Notice shall be sent to the assignee of the insolvent Member.

In case the Member is a company or body corporate which is being wound up, Notice shall be sent to the liquidator.

**1.2.2 Notice shall be sent by hand or by ordinary post or by speed post or by registered post or by courier or by facsimile or by e-mail or by any other electronic means. 'Electronic means' means any communication sent by a company through its authorised and secured computer programme which is capable of producing confirmation and keeping record of such communication addressed to the person entitled to receive such communication at the last electronic mail address provided by the Member.**

In case the Notice and accompanying documents are given by e-mail, these shall be sent at the Members' e-mail addresses, registered with the company or provided by the depository, in the manner prescribed under the Act.

The company shall ensure that it uses a system which produces confirmation of the total number of recipients e-mailed and a record of each recipient to whom the Notice has been sent and copy of such record and any Notices of any failed transmissions and subsequent re-sending shall be retained by or on behalf of the company as "proof of sending".

In case of the Directors, Auditors, Secretarial Auditors and others, if any, the Notice and accompanying documents shall be sent at the e-mail addresses provided by them to the company, if being sent by electronic means.

Notice shall be sent to Members by registered post or speed post or courier or e-mail and not by ordinary post in the following cases:

- (a) if the company provides the facility of e-voting ;
- (b) if the item of business is being transacted through postal ballot;

If a Member requests for delivery of Notice through a particular mode, other than one of those listed above, he shall pay such fees as may be determined by the company in its Annual General Meeting and the Notice shall be sent to him in such mode.

Notice shall be sent to Members by registered post or speed post or e-mail if the Meeting is called by the requisitionists themselves where the Board had not proceeded to call the Meeting.

**1.2.3. In case of companies having a website, the Notice shall be hosted on the website.**

**1.2.4 Notice shall specify the day, date, time and full address of the venue of the Meeting.**

Notice shall contain complete particulars of the venue of the Meeting including route map and prominent land mark for easy location. In case of companies having a website, the route map shall be hosted along with the Notice on the website.

Meetings shall be called during business hours, i.e., between 9 a.m. and 6 p.m., on a day that is not a National Holiday. A Meeting called by the requisitionists shall be convened only on a working day.

Annual General Meetings shall be held either at the registered office of the company or at some other place within the city, town or village in which the registered office of the company is situated, whereas other General Meetings may be held at any place within India. A Meeting called by the requisitionists shall be held either at the registered office of the company or at some other place within the city, town or village in which the registered office of the company is situated.

Notice of a company which has a share capital or the Articles of which provide for voting at a Meeting by Proxy, shall prominently contain a statement that a Member entitled to attend and vote is entitled to appoint a Proxy, or where that is allowed, one or more proxies, to attend and vote instead of himself and that a Proxy need not be a Member. In case of companies where Proxy shall be a Member under the Act, a statement to that effect shall appear in the Notice prominently.

**1.2.5 Notice shall clearly specify the nature of the Meeting and the business to be transacted thereat. In respect of items of Special Business, each such item shall be in the form of a Resolution and shall be accompanied by an explanatory statement which shall set out all such facts as would enable a Member to understand the meaning, scope and implications of the item of business and to take a decision thereon. In respect of items of Ordinary Business, Resolutions are not required to be stated in the Notice except where the Auditors or Directors to be appointed are other than the retiring Auditors or Directors, as the case may be.**

The nature of the concern or interest (financial or otherwise), if any, of the following persons, in any special item of business or in a proposed Resolution, shall be disclosed in the explanatory statement:

- (a) Directors and Manager,
- (b) Other Key Managerial Personnel; and
- (c) Relatives of the persons mentioned above.

In case any item of Special Business to be transacted at a Meeting of the company relates to or affects any other company, the extent of shareholding interest in that other company of every Promoter, Director, Manager, and of every other Key Managerial Personnel of the first mentioned company shall, if the extent of such shareholding is not less than two percent of the paid-up share capital of that company, also be stated in the explanatory statement.

Where reference is made to any document, contract, agreement, the Memorandum of Association or Articles of Association, the relevant explanatory statement shall state that such documents are available for inspection and such documents shall be so made available for inspection in physical or in electronic form during specified business hours at the Registered Office of the company and copies thereof shall also be made available for inspection in physical or electronic form at the Head Office as well as Corporate Office of the company, if any, if such office is situated elsewhere, and also at the Meeting.

In all cases relating to the appointment or re-appointment and/or fixation of remuneration of Directors including Managing Director or Executive Director or Whole - time Director or of Manager or variation of the terms of

remuneration, details of each such Director or Manager, including age, qualifications, experience, terms and conditions of appointment or re-appointment along with details of remuneration sought to be paid and the remuneration last drawn by such person, if applicable, date of first appointment on the Board, shareholding in the company, relationship with other Directors, Manager and other Key Managerial Personnel of the company, the number of Meetings of the Board attended during the year and other Directorships, Membership/ Chairmanship of Committees of other Boards shall be given in the explanatory statement.

In case of appointment of Independent Directors, the justification for choosing the appointees for appointment as Independent Directors shall be disclosed and in case of re-appointment of Independent Directors, performance evaluation report of such Director or summary thereof shall be included in the explanatory statement.

**1.2.6 Notice and accompanying documents shall be given at least twenty-one clear days in advance of the Meeting.**

For the purpose of reckoning twenty-one days clear Notice, the day of sending the Notice and the day of Meeting shall not be counted. Further in case the company sends the Notice by post or courier, an additional two days shall be provided for the service of Notice.

In case a valid special notice under the Act has been received from Member(s), the company shall give Notice of the Resolution to all its Members at least seven days before the Meeting, exclusive of the day of dispatch of Notice and day of the Meeting, in the same manner as a Notice of any General Meeting is to be given.

Where this is not practicable, the Notice shall be published in a vernacular newspaper in the principal vernacular language of the district in which the registered office of the company is situated, and in an English newspaper in English language, both having a wide circulation in that district, at least seven days before the Meeting, exclusive of the day of publication of the Notice and day of the Meeting. In case of companies having a website, such Notice shall also be hosted on the website.

**1.2.7 Notice and accompanying documents may be given at a shorter period of time if consent in writing is given thereto, by physical or electronic means, by not less than ninety-five per cent of the Members entitled to vote at such Meeting.**

The request for consenting to shorter Notice and accompanying documents shall be sent together with the Notice and the Meeting shall be held only if the consent is received prior to the date fixed for the Meeting from not less than ninety five per cent of the Members entitled to vote at such Meeting.

**1.2.8 No business shall be transacted at a Meeting if Notice in accordance with this Standard has not been given.**

However, any accidental omission to give Notice to, or the non-receipt of such Notice by any Member or other person who is entitled to such Notice for any Meeting shall not invalidate the proceedings of the Meeting.

**1.2.9 No items of business other than those specified in the Notice and those specifically permitted under the Act shall be taken up at the Meeting.**

A Resolution shall be valid only if it is passed in respect of an item of business contained in the Notice convening the Meeting or it is specifically permitted under the Act.

Items specifically permitted under the Act which may be taken up for consideration at the Meeting are:

- (a) Proposed Resolutions, the notice of which has been given by Members;
- (b) Resolutions requiring special notice, if received with the intention to move;
- (c) Candidature for Directorship, if any such notice has been received.



Where special notice is required of any Resolution and notice of the intention to move such Resolution is received by the company from the prescribed number of Members, such item of business shall be placed for consideration at the Meeting after giving Notice of the Resolution to Members in the manner prescribed under the Act.

Any amendment to the Notice, including the addition of any item of business, can be made provided the Notice of amendment is given to all persons entitled to receive the Notice of the Meeting at least twenty-one clear days before the Meeting.

**1.2.10 Notice shall be accompanied, by an attendance slip and a Proxy form with clear instructions for filling, stamping, signing and/or depositing the Proxy form.**

**1.2.11 A Meeting convened upon due Notice shall not be postponed or cancelled.**

If, for reasons beyond the control of the Board, a Meeting cannot be held on the date originally fixed, the Board may reconvene the Meeting, to transact the same business as specified in the original Notice, after giving not less than three days intimation to the Members. The intimation shall be either sent individually in the manner stated in this Standard or published in a vernacular newspaper in the principal vernacular language of the district in which the registered office of the company is situated, and in an English newspaper in English language, both having a wide circulation in that district.

## **2. Frequency of Meetings**

### **2.1 Annual General Meeting**

**Every company shall, in each Calendar Year, hold a General Meeting called the Annual General Meeting.**

Every company shall hold its first Annual General Meeting within nine months from the date of closing of the first financial year of the company and thereafter in each Calendar Year within six months of the close of the financial year, with an interval of not more than fifteen months between two successive Annual General Meetings. The aforesaid period of six months or interval of fifteen months may be extended by a period not exceeding three months with the prior approval of the Registrar of Companies, in case of any Annual General Meeting other than the first Annual General Meeting. If a company holds its first Annual General Meeting, as aforesaid, it shall not be necessary for the company to hold any Annual General Meeting in the Calendar Year of its incorporation.

### **2.2 Extra-Ordinary General Meeting**

**Items of business other than Ordinary Business may be considered at an Extra-Ordinary General Meeting or by means of a postal ballot, if thought fit by the Board.**

## **3. Quorum**

### **3.1 Quorum shall be present throughout the Meeting.**

Quorum shall be present not only at the time of commencement of the Meeting but also while transacting business.

Unless the Articles provide for a larger number, the Quorum for a General Meeting shall be:

- (a) in case of a public company,—
  - (i) five Members personally present if the number of Members as on the date of Meeting is not more than one thousand;
  - (ii) fifteen Members personally present if the number of Members as on the date of Meeting is more than one thousand but up to five thousand;

(iii) thirty Members personally present if the number of Members as on the date of the Meeting exceeds five thousand;

(b) in the case of a private company, two Members personally present.

Where the Quorum provided in the Articles is higher than that provided under the Act, the Quorum shall conform to such higher requirement.

Members need to be personally present at a Meeting to constitute the Quorum.

Proxies shall be excluded for determining the Quorum.

**3.2 A duly authorised representative of a body corporate or the representative of the President of India or the Governor of a State is deemed to be a Member personally present and enjoys all the rights of a Member present in person.**

One person can be an authorised representative of more than one body corporate. In such a case, he is treated as more than one Member present in person for the purpose of Quorum. However, to constitute a Meeting, at least two individuals shall be present in person. Thus, in case of a public company having not more than 1000 members with a Quorum requirement of five Members, an authorised representative of five bodies corporate cannot form a Quorum by himself but can do so if at least one more Member is personally present.

Members who have voted by Remote e-voting have the right to attend the General Meeting and accordingly their presence shall be, counted for the purpose of Quorum.

A Member who is not entitled to vote on any particular item of business being a related party, if present, shall be counted for the purpose of Quorum.

The stipulation regarding the presence of a Quorum does not apply with respect to items of business transacted through postal ballot.

#### **4. Presence of Directors and Auditors**

##### **4.1 Directors**

**4.1.1 If any Director is unable to attend the Meeting, the Chairman shall explain such absence at the Meeting.**

The Chairman of the Audit Committee, Nomination and Remuneration Committee and the Stakeholders Relationship Committee, or any other Member of any such Committee authorised by the Chairman of the Committee to attend on his behalf, shall attend the General Meeting.

**4.1.2 Directors who attend General Meetings of the company and the Company Secretary shall be seated with the Chairman.**

The Company Secretary shall assist the Chairman in conducting the Meeting.

##### **4.2 Auditors**

**The Auditors, unless exempted by the company, shall, either by themselves or through their authorised representative, attend the General Meetings of the company and shall have the right to be heard at such Meetings on that part of the business which concerns them as Auditors.**

The authorised representative who attends the General Meeting of the company shall also be qualified to be an Auditor.

### 4.3 Secretarial Auditor

**The Secretarial Auditor, unless exempted by the company shall, either by himself or through his authorised representative, attend the Annual General Meeting and shall have the right to be heard at such Meeting on that part of the business which concerns him as Secretarial Auditor.**

The Chairman may invite the Secretarial Auditor or his authorised representative to attend any other General Meeting, if he considers it necessary.

The authorised representative who attends the General Meeting of the company shall also be qualified to be a Secretarial Auditor.

## 5. Chairman

### 5.1 Appointment

**The Chairman of the Board shall take the chair and conduct the Meeting. If the Chairman is not present within fifteen minutes after the time appointed for holding the Meeting, or if he is unwilling to act as Chairman of the Meeting, or if no Director has been so designated, the Directors present at the Meeting shall elect one of themselves to be the Chairman of the Meeting. If no Director is present within fifteen Minutes after the time appointed for holding the Meeting, or if no Director is willing to take the chair, the Members present shall elect, on a show of hands, one of themselves to be the Chairman of the Meeting, unless otherwise provided in the Articles.**

If a poll is demanded on the election of the Chairman, it shall be taken forthwith in accordance with the provisions of the Act and the Chairman elected on a show of hands shall continue to be the Chairman of the Meeting until some other person is elected as Chairman as a result of the poll, and such other person shall be the Chairman for the rest of the Meeting.

The Chairman shall ensure that the Meeting is duly constituted in accordance with the Act and the Articles or any other applicable laws, before it proceeds to transact business. The Chairman shall then conduct the Meeting in a fair and impartial manner and ensure that only such business as has been set out in the Notice is transacted. The Chairman shall regulate the manner in which voting is conducted at the Meeting keeping in view the provisions of the Act.

**5.2 The Chairman shall explain the objective and implications of the Resolutions before they are put to vote at the Meeting.**

The Chairman shall provide a fair opportunity to Members who are entitled to vote to seek clarifications and/or offer comments related to any item of business and address the same, as warranted.

**5.3 In case of public companies, the Chairman shall not propose any Resolution in which he is deemed to be concerned or interested nor shall he conduct the proceedings for that item of business.**

If the Chairman is interested in any item of business, without prejudice to his Voting Rights on Resolutions, he shall entrust the conduct of the proceedings in respect of such item to any Dis-Interested Director or to a Member, with the consent of the Members present, and resume the Chair after that item of business has been transacted.

## 6. Proxies

### 6.1 Right to Appoint

**A Member entitled to attend and vote is entitled to appoint a Proxy, or where that is allowed, one or more proxies, to attend and vote instead of himself and a Proxy need not be a Member.**

However, a Proxy shall be a Member in case of companies with charitable objects etc. and not for profit registered under the specified provisions of the Act.

A Proxy can act on behalf of Members not exceeding fifty and holding in the aggregate not more than ten percent of the total share capital of the company carrying Voting Rights.

However, a Member holding more than ten percent of the total share capital of the company carrying Voting Rights may appoint a single person as Proxy for his entire shareholding and such person shall not act as a Proxy for another person or shareholder.

If a Proxy is appointed for more than fifty Members, he shall choose any fifty Members and confirm the same to the company before the commencement of specified period for inspection. In case, the Proxy fails to do so, the company shall consider only the first fifty proxies received as valid.

## **6.2 Form of Proxy**

**6.2.1 An instrument appointing a Proxy shall be either in the Form specified in the Articles or in the Form set out in the Act.**

The instrument of Proxy shall be signed by the appointer or his attorney duly authorised in writing, or if the appointer is a body corporate, be under its seal or be signed by an officer or an attorney duly authorised by it.

**6.2.2 An instrument of Proxy duly filled, stamped and signed, is valid only for the Meeting to which it relates including any adjournment thereof.**

## **6.3 Stamping of Proxies**

**An instrument of Proxy is valid only if it is properly stamped as per the applicable law. Unstamped or inadequately stamped Proxies or Proxies upon which the stamps have not been cancelled are invalid.**

## **6.4 Execution of Proxies**

**6.4.1 The Proxy-holder shall prove his identity at the time of attending the Meeting.**

**6.4.2 An authorised representative of a body corporate or of the President of India or of the Governor of a State, holding shares in a company, may appoint a Proxy under his signature.**

## **6.5 Proxies in Blank and Incomplete Proxies**

**6.5.1 A Proxy form which does not state the name of the Proxy shall not be considered valid.**

**6.5.2 Undated Proxy shall not be considered valid.**

**6.5.3 If a company receives multiple Proxies for the same holdings of a Member, the Proxy which is dated last shall be considered valid; if they are not dated or bear the same date without specific mention of time, all such multiple Proxies shall be treated as invalid.**

## **6.6 Deposit of Proxies**

**6.6.1 Proxies shall be deposited with the company either in person or through post not later than forty-eight hours before the commencement of the Meeting in relation to which they are deposited and a Proxy shall be accepted even on a holiday if the last date by which it could be accepted is a holiday.**

Any provision in the Articles of a company which specifies or requires a longer period for deposit of Proxy than forty-eight hours before a Meeting of the company shall have effect as if a period of forty-eight hours had been specified in or required for such deposit.

**6.6.2 If the Articles so provide, a Member who has not appointed a Proxy to attend and vote on his behalf at a Meeting may appoint a Proxy for any adjourned Meeting, not later than forty-eight hours before the time of such adjourned Meeting.**

#### **6.7 Revocation of Proxies**

**6.7.1 If a Proxy had been appointed for the original Meeting and such Meeting is adjourned, any Proxy given for the adjourned Meeting revokes the Proxy given for the original Meeting.**

**6.7.2 A Proxy later in date revokes any Proxy/Proxies dated prior to such Proxy.**

**6.7.3 A Proxy is valid until written notice of revocation has been received by the company before the commencement of the Meeting or adjourned Meeting, as the case may be.**

An undated notice of revocation of Proxy shall not be accepted. A notice of revocation shall be signed by the same Member (s) who had signed the Proxy, in the case of joint Membership.

A Proxy need not be informed of the revocation of the Proxy issued by the Member.

**6.7.4 When a Member appoints a Proxy and both the Member and Proxy attend the Meeting, the Proxy stands automatically revoked.**

#### **6.8 Inspection of Proxies**

**6.8.1 Requisitions, if any, for inspection of Proxies shall be received in writing from a Member entitled to vote on any Resolution at least three days before the commencement of the Meeting.**

**6.8.2 Proxies shall be made available for inspection during the period beginning twenty-four hours before the time fixed for the commencement of the Meeting and ending with the conclusion of the Meeting.**

Inspection shall be allowed between 9 a.m. and 6 p.m. during such period.

**6.8.3 A fresh requisition, conforming to the above requirements, shall be given for inspection of Proxies in case the original Meeting is adjourned.**

#### **6.9 Record of Proxies**

**6.9.1 All Proxies received by the company shall be recorded chronologically in a register kept for that purpose.**

**6.9.2 In case any Proxy entered in the register is rejected, the reasons therefor shall be entered in the remarks column.**

### **7. Voting**

#### **7.1 Proposing a Resolution**

**Every Resolution shall be proposed by a Member and seconded by another Member.**

## 7.2 E-voting

**7.2.1 Every company having its equity shares listed on a recognized stock exchange other than companies whose equity shares are listed on SME Exchange or on the Institutional Trading Platform and other companies as prescribed shall provide e-voting facility to their Members to exercise their Voting Rights.**

Other companies presently prescribed are companies having not less than one thousand Members.

The facility of Remote e-voting does not dispense with the requirement of holding a General Meeting by the company.

### 7.2.2 Voting at the Meeting

**Every company, which has provided e-voting facility to its Members, shall also put every Resolution to vote through a ballot process at the Meeting.**

Ballot process may be carried out by distributing ballot/poll slips or by making arrangement for voting through computer or secure electronic systems.

Any Member, who has already exercised his votes through Remote e-voting, may attend the Meeting but is prohibited to vote at the Meeting and his vote, if any, cast at the Meeting shall be treated as invalid.

A Proxy can vote in the ballot process.

## 7.3 Show of Hands

**Every company shall, at the Meeting, put every Resolution, except a Resolution which has been put to Remote e-voting, to vote on a show of hands at the first instance, unless a poll is validly demanded.**

A Proxy cannot vote on a show of hands.

## 7.4 Poll

**The Chairman shall order a poll upon receipt of a valid demand for poll either before or on the declaration of the result of the voting on any Resolution on show of hands.**

Poll in such cases shall be through a Ballot process.

While a Proxy cannot speak at the Meeting, he has the right to demand or join in the demand for a poll.

The poll may be taken by the Chairman, on his own motion also.

## 7.5 Voting Rights

**7.5.1 Every Member holding equity shares and, in certain cases as prescribed in the Act, every Member holding preference shares, shall be entitled to vote on a Resolution.**

Every Member entitled to vote on a Resolution and present in person shall, on a show of hands, have only one vote irrespective of the number of shares held by him.

A Member present in person or by Proxy shall, on a poll or ballot, have votes in proportion to his share in the paid up equity share capital of the company, subject to differential rights as to voting, if any, attached to certain shares as stipulated in the Articles or by the terms of issue of such shares.

Preference shareholders have a right to vote only in certain cases as prescribed under the Act.

**7.5.2 A Member who is a related party is not entitled to vote on a Resolution relating to approval of any contract or arrangement in which such Member is a related party.**

## **7.6 Second or Casting Vote**

**Unless otherwise provided in the Articles, in the event of equality of votes, whether on show of hands or electronically or on a poll, the Chairman of the Meeting shall have a second or casting vote.**

Where the Chairman has entrusted the conduct of proceedings in respect of an item in which he is interested to any Dis-interested Director or to a Member, a person who so takes the chair shall have a second or casting vote.

## **8. Conduct of e-voting**

**8.1 Every company that is required or opts to provide e-voting facility to its Members shall comply with the provisions in this regard.**

**8.2 Every company providing e-voting facility shall offer such facility to all Members, irrespective of whether they hold shares in physical form or in dematerialised form.**

**8.3. The facility for Remote e-voting shall remain open for not less than three days.**

The voting period shall close at 5 p.m. on the day preceding the date of the General Meeting.

### **8.4 Board Approval**

**The Board shall:**

**(a) appoint one or more scrutinisers for e-voting or the ballot process;**

The scrutiner (s) may be a Company Secretary in Practice, a Chartered Accountant in Practice, a Cost Accountant in Practice, or an Advocate or any other person of repute who is not in the employment of the company and who can, in the opinion of the Board, scrutinise the e-voting process or the ballot process, as the case may be, in a fair and transparent manner.

The scrutiner (s) so appointed may take assistance of a person who is not in employment of the company and who is well-versed with the e-voting system.

Prior consent to act as a scrutiner(s) shall be obtained from the scrutiner(s) and placed before the Board for noting.

**(b) appoint an Agency;**

**(c) decide the cut-off date for the purpose of reckoning the names of Members who are entitled to Voting Rights;**

The cut-off date for determining the Members who are entitled to vote through Remote e-voting or voting at the meeting shall be a date not earlier than seven days prior to the date fixed for the Meeting.

Only Members as on the cut-off date, who have not exercised their Voting Rights through Remote e-voting, shall be entitled to vote at the Meeting.

**(d) authorise the Chairman or in his absence, any other Director to receive the scrutiner's register, report on e-voting and other related papers with requisite details.**

The scrutiner(s) is required to submit his report within a period of three days from the date of the meeting.

The Chairman or any other director so authorized shall countersign the scrutiniser's report so received.

## 8.5 Notice

### 8.5.1 Notice of the Meeting, wherein the facility of e-voting is provided, shall be sent either by registered post or speed post or by courier or by e-mail or by any other electronic means.

An advertisement containing prescribed details shall be published, immediately on completion of despatch of notices for meeting but at least twenty one days before the date of the General Meeting, at least once in a vernacular newspaper in the principal vernacular language of the district in which the registered office of the company is situated and having a wide circulation in that district and at least once in English language in an English newspaper, having country-wide circulation, and specifying therein, *inter-alia* the following matters, namely:-

- (a) A statement to the effect that the business may be transacted by e-voting;
- (b) The date and time of commencement of remote e-voting;
- (c) The date and time of end of Remote e-voting;
- (d) The cut-off date as on which the right of voting of the Members shall be reckoned;
- (e) The manner in which persons who have acquired shares and become Members after the despatch of Notice may obtain the login ID and password;
- (f) The manner in which company shall provide for voting by Members present at the Meeting
- (g) The statement that
  - (i) Remote e-voting shall not be allowed beyond the said date and time;
  - (ii) a Member may participate in the General Meeting even after exercising his right to vote through Remote e-voting but shall not be entitled to vote again; and
  - (iii) a Member as on the cut-off date shall only be entitled for availing the Remote e-voting facility or vote, as the case may be, in the General Meeting;
- (h) Website address of the company, in case of companies having a website and Agency where Notice is displayed; and
- (i) Name, designation, address, e-mail ID and phone number of the person responsible to address the grievances connected with the e-voting.

Advertisement shall also be placed on the website of the company, in case of companies having a website and of the Agency.

### 8.5.2 Notice shall also be placed on the website of the company, in case of companies having a website, and of the Agency.

Such Notice shall remain on the website till the date of General Meeting.

### 8.5.3 Notice shall inform the Members about procedure of Remote e-voting, availability of such facility and provide necessary information thereof to enable them to access such facility.

Notice shall clearly state that the company is providing e-voting facility and that the business may be transacted through such voting.



Notice shall describe clearly the Remote e-voting procedure and the procedure of voting at the General Meeting by Members who do not vote by Remote e-voting.

Notice shall also clearly specify the date and time of commencement and end of Remote e-voting and contain a statement that at the end of Remote e-voting period, the facility shall forthwith be blocked.

Notice shall also contain contact details of the official responsible to address the grievances connected with voting by electronic means.

Notice shall clearly specify that any Member, who has voted by Remote e-voting, cannot vote at the Meeting.

Notice shall also specify the mode of declaration of the results of e- voting.

Notice shall also clearly mention the cut-off date as on which the right of voting of the Members shall be reckoned and state that a person who is not a Member as on the cut off date should treat this Notice for information purposes only.

Notice shall provide the details about the login ID and the process and manner for generating or receiving the password and for casting of vote in a secure manner.

## **8.6 Declaration of results**

**8.6.1 Based on the scrutiniser's report received on Remote e-voting and voting at the Meeting, the Chairman or any other Director so authorised shall countersign the scrutiniser's report and declare the result of the voting forthwith with details of the number of votes cast for and against the Resolution, invalid votes and whether the Resolution has been carried or not.**

**8.6.2 The result of the voting, with details of the number of votes cast for and against the Resolution, invalid votes and whether the Resolution has been carried or not shall be displayed on the Notice Board of the company at its Registered Office and its Head Office as well as Corporate Office, if any, if such office is situated elsewhere. Further, the results of voting alongwith the scrutiniser's report shall also be placed on the website of the company, in case of companies having a website and of the Agency, immediately after the results are declared.**

**8.6.3 The Resolution, if passed by a requisite majority, shall be deemed to have been passed on the date of the relevant General Meeting.**

## **8.7 Custody of scrutinisers' register, report and other related papers**

**The scrutinisers' register, report and other related papers received from the scrutiniser(s) shall be kept in the custody of the Company Secretary or any other person authorised by the Board for this purpose.**

## **9. Conduct of Poll**

**9.1 When a poll is demanded on any Resolution, the Chairman shall get the validity of the demand verified and, if the demand is valid, shall order the poll forthwith if it is demanded on the question of appointment of the Chairman or adjournment of the Meeting and, in any other case, within forty-eight hours of the demand for poll.**

**9.2 In the case of a poll, which is not taken forthwith, the Chairman shall announce the date, venue and time of taking the poll to enable Members to have adequate and convenient opportunity to**

**exercise their vote. The Chairman may permit any Member who so desires to be present at the time of counting of votes.**

If the date, venue and time of taking the poll cannot be announced at the Meeting, the Chairman shall inform the Members, the modes and the time of such communication, which shall in any case be within twenty four hours of closure of the Meeting.

A Member who did not attend the Meeting can participate and vote in the poll in such cases.

**9.3 Each Resolution put to vote by poll shall be put to vote separately.**

One ballot paper may be used for more than one item.

**9.4 Appointment of scrutinisers**

**The Chairman shall appoint such number of scrutinisers, as he deems necessary, who may include a Company Secretary in Practice, a Chartered Accountant in Practice, a Cost Accountant in Practice, an Advocate or any other person of repute who is not in the employment of the company, to ensure that the scrutiny of the votes cast on a poll is done in a fair and transparent manner.**

At least one of the scrutinisers shall be a Member who is present at the Meeting, provided such a Member is available and willing to be appointed.

**9.5 Declaration of results**

**9.5.1 Based on the scrutinisher's report, the Chairman shall declare the result of the poll within two days of the submission of report by the scrutinisher, with details of the number of votes cast for and against the Resolution, invalid votes and whether the Resolution has been carried or not.**

The scrutinisher shall submit his report to the Chairman who shall countersign the same. In case Chairman is not available, for such purpose, the report by the scrutinisher shall be submitted to any Director who is authorised by the Board to receive such report, who shall countersign the scrutinisher's report on behalf of the Chairman.

The result shall be announced by the Chairman or any other person authorised by the Chairman in writing for this purpose.

The Chairman of the Meeting shall have the power to regulate the manner in which the poll shall be taken and shall ensure that the poll is scrutinised in the manner prescribed under the Act.

**9.5.2 The result of the poll with details of the number of votes cast for and against the Resolution, invalid votes and whether the Resolution has been carried or not shall be displayed on the Notice Board of the company at its Registered Office and its Head Office as well as Corporate Office, if any, if such office is situated elsewhere, and in case of companies having a website, shall also be placed on the website.**

**9.5.3 The result of the poll shall be deemed to be the decision of the Meeting on the Resolution on which the poll was taken.**

**10. Prohibition on Withdrawal of Resolutions**

**Resolutions for items of business which are likely to affect the market price of the securities of the company shall not be withdrawn. However, any resolution proposed for consideration through e-voting shall not be withdrawn.**

## 11. Rescinding of Resolutions

**A Resolution passed at a Meeting shall not be rescinded otherwise than by a Resolution passed at a subsequent Meeting.**

## 12. Modifications to Resolutions

**Modifications to any Resolution which do not change the purpose of the Resolution materially may be proposed, seconded and adopted by the requisite majority at the Meeting and, thereafter, the modified Resolution shall be duly proposed, seconded and put to vote.**

No modification to any proposed text of the Resolution shall be made if it in any way alters the substance of the Resolution as set out in the Notice. Grammatical, clerical, factual and typographical errors, if any, may be corrected as deemed fit by the Chairman.

No modification shall be made to any Resolution which has already been put to vote by Remote e-voting before the Meeting.

## 13. Reading of Reports

**13.1 The qualifications, observations or comments or other remarks on the financial transactions or matters which have any adverse effect on the functioning of the company, if any, mentioned in the Auditor's Report shall be read at the Annual General Meeting and attention of the Members present shall be drawn to the explanations / comments given by the Board of Directors in their report.**

**13.2 The qualifications, observations or comments or other remarks if any, mentioned in the Secretarial Audit Report issued by the Company Secretary in Practice, shall be read at the Annual General Meeting and attention of Members present shall be drawn to the explanations/ comments given by the Board of Directors in their report.**

## 14. Distribution of Gifts

**No gifts, gift coupons, or cash in lieu of gifts shall be distributed to Members at or in connection with the Meeting.**

## 15. Adjournment of Meetings

**15.1 A duly convened Meeting shall not be adjourned unless circumstances so warrant. The Chairman may adjourn a Meeting with the consent of the Members, at which a Quorum is present, and shall adjourn a Meeting if so directed by the Members.**

Meetings shall stand adjourned for want of requisite Quorum.

The Chairman may also adjourn a Meeting in the event of disorder or other like causes, when it becomes impossible to conduct the Meeting and complete its business.

**15.2 If a Meeting is adjourned *sine-die* or for a period of thirty days or more, a Notice of the adjourned Meeting shall be given in accordance with the provisions contained hereinabove relating to Notice.**

**15.3 If a Meeting is adjourned for a period of less than thirty days, the company shall give not less than three days' Notice specifying the day, date, time and venue of the Meeting, to the Members either individually or by publishing an advertisement in a vernacular newspaper in the principal**

**vernacular language of the district in which the registered office of the company is situated, and in an English newspaper in English language, both having a wide circulation in that district.**

**15.4 If a Meeting, other than a requisitioned Meeting, stands adjourned for want of Quorum, the adjourned Meeting shall be held on the same day, in the next week at the same time and place or on such other day, not being a National Holiday, or at such other time and place as may be determined by the Board.**

If a Meeting is adjourned for want of a Quorum to the same day on the next week, at the same time and place or with a change of day, time or place, the company shall give not less than three days' Notice specifying the day, date, time and venue of the Meeting, to the Members either individually or by publishing an advertisement in a vernacular newspaper in the principal vernacular language of the district in which the registered office of the company is situated, and in an English newspaper in English language, both having a wide circulation in that district.

If, at an adjourned Meeting, Quorum is not present within half an hour from the time appointed, the Members present, being not less than two in number, will constitute the Quorum.

**15.5 If, within half an hour from the time appointed for holding a Meeting called by requisitionists, a Quorum is not present, the Meeting shall stand cancelled.**

**15.6 At an adjourned Meeting, only the unfinished business of the original Meeting shall be considered.**

Any Resolution passed at an adjourned Meeting would be deemed to have been passed on the date of the adjourned Meeting and not on any earlier date.

## **16. Passing of Resolutions by postal ballot**

**16.1 Every company, except a company having less than or equal to two hundred Members, shall transact items of business as prescribed, only by means of postal ballot instead of transacting such business at a General Meeting.**

The list of items of businesses requiring to be transacted only by means of a postal ballot is given at Annexure.

The Board may however opt to transact any other item of special business, not being any business in respect of which Directors or auditors have a right to be heard at the Meeting, by means of postal ballot.

Ordinary Business shall not be transacted by means of a postal ballot.

**16.2 Every company having its equity shares listed on a recognized stock exchange other than companies whose equity shares are listed on SME Exchange or on the Institutional Trading Platform and other companies which are required to provide e-voting facility shall provide such facility to its Members in respect of those items, which are required to be transacted through postal ballot.**

Other companies presently prescribed are companies having not less than one thousand Members.

### **16.3 Board Approval**

**The Board shall:**

- (a) identify the businesses to be transacted through postal ballot;**
- (b) approve the Notice of postal ballot incorporating proposed Resolution(s) and explanatory statement thereto;**

- (c) authorise the Company Secretary or where there is no Company Secretary, any Director of the company to conduct postal ballot process and sign and send the Notice along with other documents ;**
- (d) appoint one scrutiniser for the postal ballot.**

The scrutiniser may be a Company Secretary in Practice, a Chartered Accountant in Practice, a Cost Accountant in Practice, an Advocate or any other person of repute who is not in the employment of the company and, who can in the opinion of the Board, scrutinise the postal ballot process in a fair and transparent manner.

The scrutiniser shall however not be an officer or employee of the company.

The scrutiniser so appointed may take assistance of a person who is not in employment of the company and who is well-versed with the e-voting system.

Prior Consent to act as a scrutiniser shall be obtained from the scrutiniser and placed before the Board for noting.

- (e) appoint an Agency in respect of e-voting for the postal ballot;**
- (f) decide the record date for reckoning Voting Rights and ascertaining those Members to whom the Notice and postal ballot forms shall be sent.**

Only Members as of the record date shall be entitled to vote on the proposed Resolution by postal ballot.

- (g) decide on the calendar of events.**
- (h) authorise the Chairman or in his absence, any other Director to receive the scrutiniser's register, report on postal ballot and other related papers with requisite details.**

The scrutiniser is required to submit his report within seven days from the last date of receipt of postal ballot forms.

## **16.4 Notice**

- 16.4.1 Notice of the postal ballot shall be given in writing to every Member of the company. Such Notice shall be sent either by registered post or speed post, or by courier or by e-mail or by any other electronic means at the address registered with the company.**

The Notice shall be accompanied by the postal ballot form with the necessary instructions for filling, signing and returning the same.

In case the Notice and accompanying documents are sent to Members by e-mail, these shall be sent to the Members' e-mail addresses, registered with the company or provided by the depository, in the manner prescribed under the Act.

Such Notice shall also be given to the Directors and Auditors of the company, to the Secretarial Auditor, to Debenture Trustees, if any, and, wherever applicable or so required, to other specified recipients.

An advertisement containing prescribed details shall be published at least once in a vernacular newspaper in the principal vernacular language of the district in which the registered office of the company is situated, and having a wide circulation in that district, and at least once in English language in an English newspaper having a wide circulation in that district, about having dispatched the Notice and the ballot papers.

**16.4.2 In case of companies having a website, Notice of the postal ballot shall also be placed on the website.**

Such Notice shall remain on the website till the last date for receipt of the postal ballot forms from the Members.

**16.4.3 Notice shall specify the day, date, time and venue where the results of the voting by postal ballot will be announced and the link of the website where such results will be displayed.**

Notice shall also specify the mode of declaration of the results of the voting by postal ballot.

**16.4.4 Notice of the postal ballot shall inform the Members about availability of e-voting facility, if any, and provide necessary information thereof to enable them to access such facility.**

In case the facility of e-voting has been made available, the provisions relating to conduct of e-voting shall apply, *mutatis mutandis*, as far as applicable.

Notice shall describe clearly the e-voting procedure.

Notice shall also clearly specify the date and time of commencement and end of e-voting, if any and contain a statement that voting shall not be allowed beyond the said date and time. Notice shall also contain contact details of the official responsible to address the grievances connected with the e-voting for postal ballot.

Notice shall clearly specify that any Member cannot vote both by post and e-voting and if he votes both by post and e-voting, his vote by post shall be treated as invalid.

The advertisement shall, *inter alia*, state the following matters:

- (a) a statement to the effect that the business is to be transacted by postal ballot which may include voting by electronic means;
- (b) the date of completion of dispatch of Notices;
- (c) the date of commencement of voting (postal and e-voting);
- (d) the date of end of voting (postal and e-voting);
- (e) the statement that any postal ballot form received from the Member after thirty days from the date of dispatch of Notice will not be valid;
- (f) a statement to the effect that Member who has not received postal ballot form may apply to the company and obtain a duplicate thereof;
- (g) contact details of the person responsible to address the queries/grievances connected with the voting by postal ballot including voting by electronic means, if any; and
- (h) day, date, time and venue of declaration of results and the link of the website where such results will be displayed.

Notice and the advertisement shall clearly mention the record date as on which the right of voting of the Members shall be reckoned and state that a person who is not a Member as on the record date should treat this Notice for information purposes only.

**16.4.5 Each item proposed to be passed through postal ballot shall be in the form of a Resolution and shall be accompanied by an explanatory statement which shall set out all such facts as would enable a Member to understand the meaning, scope and implications of the item of business and to take a decision thereon.**

## **16.5 Postal ballot forms**

**16.5.1 The postal ballot form shall be accompanied by a postage prepaid reply envelope addressed to the scrutiniser.**

A single postal ballot Form may provide for multiple items of business to be transacted.

**16.5.2 The postal ballot form shall contain instructions as to the manner in which the form is to be completed, assent or dissent is to be recorded and its return to the scrutiniser.**

The postal ballot form may specify instances in which such Form shall be treated as invalid or rejected and procedure for issue of duplicate postal ballot Forms.

**16.5.3 A postal ballot form shall be considered invalid if:**

- (a) A form other than one issued by the company has been used;**
- (b) It has not been signed by or on behalf of the Member;**
- (c) Signature on the postal ballot form doesn't match the specimen signatures with the company**
- (d) It is not possible to determine without any doubt the assent or dissent of the Member;**
- (e) Neither assent nor dissent is mentioned;**
- (f) Any competent authority has given directions in writing to the company to freeze the Voting Rights of the Member;**
- (g) The envelope containing the postal ballot form is received after the last date prescribed;**
- (h) The postal ballot form, signed in a representative capacity, is not accompanied by a certified copy of the relevant specific authority;**
- (i) It is received from a Member who is in arrears of payment of calls;**
- (j) It is defaced or mutilated in such a way that its identity as a genuine form cannot be established;**
- (k) Member has made any amendment to the Resolution or imposed any condition while exercising his vote.**

A postal ballot form which is otherwise complete in all respects and is lodged within the prescribed time limit but is undated shall be considered valid.

## **16.6 Declaration of results**

**16.6.1 Based on the scrutiniser's report, the Chairman or any other Director authorised by him shall declare the result of the postal ballot on the date, time and venue specified in the Notice, with details of the number of votes cast for and against the Resolution, invalid votes and the final result as to whether the Resolution has been carried or not.**

The scrutiniser shall submit his report to the Chairman who shall countersign the same. In case Chairman is not available, for such purpose, the report by the scrutiniser shall be submitted to any other Director who is authorised by the Board to receive such report, who shall countersign the scrutiniser's report on behalf of the Chairman.

**16.6.2 The result of the voting with details of the number of votes cast for and against the**

**Resolution, invalid votes and whether the Resolution has been carried or not, along with the scrutiniser's report shall be displayed on the Notice Board of the company at its Registered Office and its Head Office as well as Corporate Office, if any, if such office is situated elsewhere, and also be placed on the website of the company, in case of companies having a website.**

**16.6.3 The Resolution, if passed by requisite majority, shall be deemed to have been passed on the last date specified by the company for receipt of duly completed postal ballot forms or e-voting.**

**16.7 Custody of scrutiniser's registers, report and other related papers**

**The postal ballot forms, other related papers, register and scrutiniser's report received from the scrutiniser shall be kept in the custody of the Company Secretary or any other person authorised by the Board for this purpose.**

**16.8 Rescinding the Resolution**

**A Resolution passed by postal ballot shall not be rescinded otherwise than by a Resolution passed subsequently through postal ballot.**

**16.9 Modification to the Resolution**

**No amendment or modification shall be made to any Resolution circulated to the Members for passing by means of postal ballot.**

**17. Minutes**

Every company shall keep Minutes of all Meetings. Minutes kept in accordance with the provisions of the Act evidence the proceedings recorded therein. Minutes help in understanding the deliberations and decisions taken at the Meeting.

**17.1 Maintenance of Minutes**

**17.1.1 Minutes shall be recorded in books maintained for that purpose.**

**17.1.2 A distinct Minutes Book shall be maintained for Meetings of the Members of the company, creditors and others as may be required under the Act.**

Resolutions passed by postal ballot shall be recorded in the Minutes book of General Meetings.

**17.1.3 Minutes may be maintained in electronic form in such manner as prescribed under the Act and as may be decided by the Board. Minutes in electronic form shall be maintained with Timestamp.**

A company may maintain its Minutes in physical or in electronic form with Timestamp.

Every company shall, however, follow a uniform and consistent form of maintaining the Minutes. Any deviation in such form of maintenance shall be authorised by the Board.

**17.1.4 The pages of the Minutes Books shall be consecutively numbered.**

This shall be followed irrespective of a break in the Book arising out of periodical binding in case the Minutes are maintained in physical form. This shall be equally applicable for maintenance of Minutes Book in electronic form with Timestamp.



In the event any page or part thereof in the Minutes Book is left blank, it shall be scored out and initialled by the Chairman who signs the Minutes.

**17.1.5 Minutes shall not be pasted or attached to the Minutes Book, or tampered with in any manner.**

**17.1.6 Minutes of Meetings, if maintained in loose-leaf form, shall be bound periodically depending on the size and volume.**

There shall be a proper locking device to ensure security and proper control to prevent removal or manipulation of the loose leaves.

**17.1.7 Minutes Books shall be kept at the Registered Office of the company or at such other place, as may be approved by the Board.**

## **17.2 Contents of Minutes**

### **17.2.1 General Contents**

**17.2.1.1 Minutes shall state, at the beginning the Meeting, name of the company, day, date, venue and time of commencement and conclusion of the Meeting.**

In case a Meeting is adjourned, the Minutes shall be entered in respect of the original Meeting as well as the adjourned Meeting. In respect of a Meeting convened but adjourned for want of Quorum a statement to that effect shall be recorded by the Chairman or any Director present at the Meeting in the Minutes.

**17.2.1.2 Minutes shall record the names of the Directors and the Company Secretary present at the Meeting.**

The names of the Directors shall be listed in alphabetical order or in any other logical manner, but in either case starting with the name of the person in the Chair.

### **17.2.2 Specific Contents**

**17.2.2.1 Minutes shall, *inter alia*, contain:**

- (a) The Record of election, if any, of the Chairman of the Meeting.**
- (b) The fact that certain registers, documents, the Auditor's Report and Secretarial Audit Report, as prescribed under the Act were available for inspection.**
- (c) The Record of presence of Quorum.**
- (d) The number of Members present in person including representatives.**
- (e) The number of proxies and the number of shares represented by them.**
- (f) The presence of the Chairmen of the Audit Committee, Nomination and Remuneration Committee and Stakeholders Relationship Committee or their authorised representatives.**
- (g) The presence if any, of the Secretarial Auditor, the Auditors, or their authorised representatives, the Court/Tribunal appointed observers or scrutinisers.**
- (h) Summary of the opening remarks of the Chairman.**
- (i) Reading of qualifications, observations or comments or other remarks on the financial transactions or matters which have any adverse effect on the functioning of the company, as mentioned in the report of the Auditors.**

- (j) **Reading of qualifications, observations or comments or other remarks as mentioned in the report of the Secretarial Auditor.**
- (k) **Summary of the clarifications provided on various Agenda Items.**
- (l) **In respect of each Resolution, the type of the Resolution, the names of the persons who proposed and seconded and the majority with which such Resolution was passed.**

Where a motion is moved to modify a proposed Resolution, the result of voting on such motion shall be mentioned. If a Resolution proposed undergoes modification pursuant to a motion by shareholders, the Minutes shall contain the details of voting for the modified Resolution.

- (m) **In the case of poll, the names of scrutinisers appointed and the number of votes cast in favour and against the Resolution and invalid votes.**
- (n) **If the Chairman vacates the Chair in respect of any specific item, the fact that he did so and in his place some other Director or Member took the Chair.**
- (o) **The time of commencement and conclusion of the Meeting.**

**17.2.2.2 In respect of Resolutions passed by e-voting or postal ballot, a brief report on the e-voting or postal ballot conducted including the Resolution proposed, the result of the voting thereon and the summary of the scrutiner's report shall be recorded in the Minutes Book and signed by the Chairman or in the event of death or inability of the Chairman, by any Director duly authorised by the Board for the purpose, within thirty days from the date of passing of Resolution by e-voting or postal ballot.**

### **17.3. Recording of Minutes**

**17.3.1 Minutes shall contain a fair and correct summary of the proceedings of the Meeting.**

The Company Secretary shall record the proceedings of the Meetings. Where there is no Company Secretary, any other person authorised by the Board or by the Chairman in this behalf shall record the proceedings.

The Chairman shall ensure that the proceedings of the Meeting are correctly recorded.

The Chairman has absolute discretion to exclude from the Minutes, matters which in his opinion are or could reasonably be regarded as defamatory of any person, irrelevant or immaterial to the proceedings or which are detrimental to the interests of the company.

**17.3.2 Minutes shall be written in clear, concise and plain language.**

Minutes shall be written in third person and past tense. Resolutions shall however be written in present tense.

Minutes need not be an exact transcript of the proceedings at the Meeting.

**17.3.3 Each item of business taken up at the Meeting shall be numbered.**

Numbering shall be in a manner which would enable ease of reference or cross-reference.

### **17.4. Entry in the Minutes Book**

**17.4.1 Minutes shall be entered in the Minutes Book within thirty days from the date of conclusion of the Meeting.**

In case a Meeting is adjourned, the Minutes in respect of the original Meeting as well as the adjourned Meeting shall be entered in the Minutes Book within thirty days from the date of the respective Meetings.

**17.4.2 The date of entry of the Minutes in the Minutes Book shall be recorded by the Company Secretary.**

Where there is no Company Secretary, it shall be entered by any other person authorised by the Board or the Chairman

**17.4.3 Minutes, once entered in the Minutes Book, shall not be altered.**

**17.5. Signing and Dating of Minutes**

**17.5.1 Minutes of a General Meeting shall be signed and dated by the Chairman of the Meeting or in the event of death or inability of that Chairman, by any Director who was present in the Meeting and duly authorised by the Board for the purpose, within thirty days of the General Meeting.**

**17.5.2 The Chairman shall initial each page of the Minutes, sign the last page and append to such signature the date on which and the place where he has signed the Minutes.**

Any blank space in a page between the conclusion of the Minutes and signature of the Chairman shall be scored out.

If the Minutes are maintained in electronic form, the Chairman shall sign the Minutes digitally.

**17.6. Inspection and Extracts of Minutes**

**17.6.1 Directors and Members are entitled to inspect the Minutes of all General Meetings including Resolutions passed by postal ballot.**

Minutes of all General Meetings shall be open for inspection by any Member during business hours of the company, without charge, subject to such reasonable restrictions as the company may, by its Articles or in General Meeting, impose, so, however, that not less than two hours in each business day are allowed for inspection.

The Company Secretary in Practice appointed by the company, the Secretarial Auditor, the Statutory Auditor, the Cost Auditor or the Internal Auditor of the company can inspect the Minutes as he may consider necessary for the performance of his duties.

Inspection of Minutes Book may be provided in physical or in electronic form.

While providing inspection of Minutes Book, the Company Secretary or the official of the company authorised by the Company Secretary to facilitate inspection shall take all precautions to ensure that the Minutes Book is not mutilated or in any way tampered with by the person inspecting.

**17.6.2 Extract of the Minutes shall be given only after the Minutes have been duly signed. However, any Resolution passed at a Meeting may be issued even pending signing of the Minutes, provided the same is certified by the Chairman or any Director or the Company Secretary.**

When a Member requests in writing for a copy of any Minutes, which he is entitled to inspect, the company shall furnish the same within seven working days of receipt of his request, subject to payment of such fee as may be specified in the Articles of the company. In case a Member requests for the copy of the Minutes in electronic form, in respect of any previous General Meetings held during a period immediately preceding three financial years, the company shall furnish the same on payment of such fee as prescribed under the Act.

Copies of the Minutes or the extracts thereof as requisitioned by the Member, duly certified by the Company Secretary or where there is no Company Secretary, an officer duly authorised by the Board in this behalf, may be provided in physical or electronic form.

## **18. Preservation of Minutes and other Records**

### **18.1 Minutes of all Meetings shall be preserved permanently in physical or in electronic form with Timestamp.**

Where, under a scheme of arrangement, a company has been merged or amalgamated with another company, Minutes of all Meetings of the transferor company, as handed over to the transferee company, shall be preserved permanently by the transferee company, notwithstanding that the transferor company might have been dissolved.

### **18.2 Office copies of Notices, scrutiniser's report, and related papers shall be preserved in good order in physical or in electronic form for as long as they remain current or for eight financial years, whichever is later and may be destroyed thereafter with the approval of the Board.**

Office copies of Notices, scrutiniser's report, and related papers of the transferor company, as handed over to the transferee company, shall be preserved in good order in physical or electronic form for as long as they remain current or for eight financial years, whichever is later and may be destroyed thereafter with the approval of the Board and permission of the Central Government, where applicable.

### **18.3 Minutes Books shall be kept in the custody of the Company Secretary.**

Where there is no Company Secretary, Minutes shall be kept in the custody of any Director duly authorised for the purpose by the Board.

## **19. Report on Annual General Meeting**

**Every listed company shall prepare a report on Annual General Meeting in the prescribed form, including a confirmation that the Meeting was convened, held and conducted as per the provisions of the Act.**

Such report which shall be a fair and correct summary of the proceedings of the Meeting shall contain:

- (a) the day, date, time and venue of the Annual General Meeting;
- (b) confirmation with respect to appointment of Chairman of the Meeting;
- (c) number of Members attending the Meeting;
- (d) confirmation of Quorum;
- (e) confirmation with respect to compliance of the Act and Standards with respect to calling, convening and conducting the Meeting;
- (f) business transacted at the Meeting and result thereof with a brief summary of the discussions;
- (g) particulars with respect to any adjournment, postponement of Meeting, change in venue; and
- (h) any other points relevant for inclusion in the report.

It shall be signed and dated by the Chairman of the Meeting or in case of his inability to sign, by any two Directors of the company, one of whom shall be the Managing Director, if there is one and Company Secretary.

Such report shall be filed with the Registrar of Companies within thirty days of the conclusion of the Annual General Meeting.

## **20. Disclosure**

**The Annual Return of a company shall disclose the date of Annual General Meeting held during the financial year.**

### **EFFECTIVE DATE**

This Standard shall come into effect from 1st July, 2015

Annexure  
(Para 16.1)

**Items of business which shall be passed only by postal ballot**

1. alteration of the objects clause of the memorandum and in the case of the company in existence immediately before the commencement of the Act, alteration of the main objects of the memorandum
2. alteration of articles of association in relation to insertion or removal of provisions which are required to be included in the articles of a company in order to constitute it a private company
3. change in place of registered office outside the local limits of any city, town or village
4. change in objects for which a company has raised money from public through prospectus and still has any unutilised amount out of the money so raised
5. issue of shares with differential rights as to voting or dividend or otherwise
6. variation in the rights attached to a class of shares or debentures or other securities
7. buy-back of shares by a company
8. appointment of a Director elected by small shareholders
9. sale of the whole or substantially the whole of an undertaking of a company or where the company owns more than one undertaking, of whole or substantially the whole of any of such undertakings
10. giving loans or extending guarantee or providing security in excess of the limit specified
11. any other Resolution prescribed under any applicable law, rules or regulations

# SECURITIES AND EXCHANGE BOARD OF INDIA (LISTING OBLIGATIONS AND DISCLOSURE REQUIREMENTS) REGULATION, 2015

- CHAPTER I PRELIMINARY,
- CHAPTER II PRINCIPLES GOVERNING DISCLOSURES AND OBLIGATIONS OF LISTED ENTITY
- CHAPTER III COMMON OBLIGATIONS OF LISTED ENTITIES
- CHAPTER IV OBLIGATIONS OF LISTED ENTITY WHICH HAS LISTED ITS SPECIFIED SECURITIES
- CHAPTER V OBLIGATIONS OF LISTED ENTITY WHICH HAS LISTED ITS NON-CONVERTIBLE DEBT SECURITIES OR NON-CONVERTIBLE REDEEMABLE PREFERENCE SHARES OR BOTH
- CHAPTER VI OBLIGATIONS OF LISTED ENTITY WHICH HAS LISTED ITS SPECIFIED SECURITIES AND EITHER NON-CONVERTIBLE DEBT SECURITIES OR NON-CONVERTIBLE REDEEMABLE PREFERENCE SHARES OR BOTH
- CHAPTER VII OBLIGATIONS OF LISTED ENTITY WHICH HAS LISTED ITS INDIAN DEPOSITORY RECEIPTS
- CHAPTER VIII OBLIGATIONS OF LISTED ENTITY WHICH HAS LISTED ITS SECURITISED DEBT INSTRUMENTS
- CHAPTER IX OBLIGATIONS OF LISTED ENTITY WHICH HAS LISTED ITS MUTUAL FUND UNITS
- CHAPTER X DUTIES AND OBLIGATIONS OF THE RECOGNISED STOCK EXCHANGE(S)
- CHAPTER XI PROCEDURE FOR ACTION IN CASE OF DEFAULT
- CHAPTER XII MISCELLANEOUS
- SCHEDULE I TERMS OF SECURITIES
- SCHEDULE II CORPORATE GOVERNANCE
  - PART A: MINIMUM INFORMATION TO BE PLACED BEFORE BOARD OF DIRECTORS
  - PART B: COMPLIANCE CERTIFICATE
  - PART C: ROLE OF THE AUDIT COMMITTEE AND REVIEW OF INFORMATION BY AUDIT COMMITTEE
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- SCHEDULE III

- PART A: DISCLOSURES OF EVENTS OR INFORMATION: SPECIFIED SECURITIES
- PART B: DISCLOSURE OF INFORMATION HAVING BEARING ON PERFORMANCE/OPERATION OF LISTED ENTITY AND/OR PRICE SENSITIVE INFORMATION: NON-CONVERTIBLE DEBT SECURITIES & NON-CONVERTIBLE REDEEMABLE PREFERENCE SHARES
- PART C: DISCLOSURES OF MATERIAL EVENTS OR INFORMATION: INDIAN DEPOSITORY RECEIPTS
- PART D: DISCLOSURE OF INFORMATION HAVING BEARING ON PERFORMANCE/ OPERATION OF LISTED ENTITY AND/OR PRICE SENSITIVE INFORMATION: SECURITISED DEBT INSTRUMENT

– SCHEDULE IV

- PART A: DISCLOSURES IN FINANCIAL RESULTS
- PART B: PREPARTION AND DISCLSOURS IN FINANCIAL RESULTS OF LISTED ENTITY WHICH HAS LISTED ITS INDIAN DEPOSITORY RECEIPTS

– SCHEDULE V: ANNUAL REPORT

– SCHEDULE VI: MANNER OF DEALING WITH UNCLAIMED SHARES

– SCHEDULE VII: TRANSFER OF SECURITIES

– SCHEDULE VIII - MANNER OF REVIEWING FORM B ACCOMPANYING ANNUAL AUDITED RESULTS

– SCHEDULE IX- AMENDMENTS TO OTHER REGULATIONS

The relevant provisions which were updated in Securities And Exchange Board Of India (Listing Obligations And Disclosure Requirements) Regulation,2015 relating to Company Law are given in *Annexure -A*

**CHAPTER I**  
**PRELIMINARY**

**Short title and commencement.**

1. (1) These regulations may be called the Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015.

(2) They shall come into force on the ninetieth day from the date of their publication in the Official Gazette: Provided that the provisions of sub-regulation (4) of regulation 23 and regulation 31A shall come into force on the date of notification of these regulations.

**Definitions.**

2. (1) In these regulations, unless the context otherwise requires:

- (a) "Act" means the Securities and Exchange Board of India Act, 1992 (15 of 1992);
- (b) "associate" shall mean any entity which is an associate under sub-section (6) of section 2 of the Companies Act, 2013 or under the applicable accounting standards: Provided that this definition shall not be applicable for the units issued by mutual fund which are listed on a recognised stock exchange(s) for which the provisions of the Securities and Exchange Board of India (Mutual Funds) Regulations, 1996 shall be applicable;
- (c) "Board" means the Securities and Exchange Board of India established under section 3 of the Act ;
- (d) "board of directors" or "board of trustees" shall mean the board of directors or board of trustees, whichever applicable, of the listed entity;
- (e) "chief executive officer" or "managing director" or "manager" shall mean the person so appointed in terms of the Companies Act, 2013;
- (f) "chief financial officer" or "whole time finance director" or "head of finance", by whatever name called, shall mean the person heading and discharging the finance function of the listed entity as disclosed by it to the recognised stock exchange(s) in its filing under these regulations;
- (g) "committee" shall mean committee of board of directors or any other committee so constituted;
- (h) "designated securities" means specified securities, non-convertible debt securities, non-convertible redeemable preference shares, perpetual debt instrument, perpetual non-cumulative preference shares, Indian depository receipts, securitised debt instruments, units issued by mutual funds and any other securities as may be specified by the Board ;
- (i) "financial year" shall have the same meaning as assigned to it under sub-section (41) of section 2 of the Companies Act, 2013;
- (j) "global depository receipts" means global depository receipts as defined in sub-section (44) of section 2 of the Companies Act, 2013;
- (k) "half year" means the period of six months commencing on the first day of April or October of a financial year;
- (l) "half yearly results" means the financial results prepared in accordance with these regulations in respect of a half year;
- (m) "holding company" means a holding company as defined in sub-section (46) of section 2 of the Companies



Act, 2013;

- (n) 'Indian depository receipts' means Indian depository receipts as defined in sub-section(48) of section 2 of the Companies Act, 2013;
- (o) "key managerial personnel" means key managerial personnel as defined in sub-section (51) of section 2 of the Companies Act, 2013;
- (p) "listed entity" means an entity which has listed, on a recognised stock exchange(s), the designated securities issued by it or designated securities issued under schemes managed by it, in accordance with the listing agreement entered into between the entity and the recognised stock exchange(s);
- (q) "listing agreement" shall mean an agreement that is entered into between a recognised stock exchange and an entity, on the application of that entity to the recognised stock exchange, undertaking to comply with conditions for listing of designated securities;
- (r) "main board" means main board as defined in clause (a) of sub-regulation (1) of regulation 106N of the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2009;
- (s) "net worth" means net worth as defined in sub-section (57) of section 2 of the Companies Act, 2013;
- (t) 'non-convertible debt securities' which is 'debt securities' as defined under regulation 2(1)(e) of the Securities and Exchange Board of India (Issue and Listing of Debt Securities) Regulations, 2008;
- (u) 'non-convertible redeemable preference shares', 'perpetual debt instrument'/'innovative perpetual debt instrument' and 'perpetual non-cumulative preference share' shall have the same meaning as assigned to them in the Securities and Exchange Board of India (Issue and Listing of Non-Convertible Redeemable Preference Shares) Regulations, 2013;
- (v) "offer document" shall have the same meaning assigned to it under clause (x) of sub-regulation (1) of regulation 2 of the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2009, clause (j) of sub-regulation(1) of regulation 2 of the Securities and Exchange Board of India (Issue and Listing of Debt Securities) Regulations, 2008, clause (p) of sub-regulation (1) of regulation 2 of the Securities and Exchange Board of India (Issue and Listing of Non-Convertible Redeemable Preference Shares) Regulations, 2013, clause (r) of regulation 2 of the Securities and Exchange Board of India (Mutual Funds) Regulations, 1996 and clause (l) of sub-regulation (1) of regulation 2 of the Securities and Exchange Board of India (Public Offer and Listing of Securitised Debt Instruments) Regulations, 2008, as may be applicable;
- (w) "promoter" and "promoter group" shall have the same meaning as assigned to them respectively in clauses (za) and (zb) of sub-regulation (1) of regulation 2 of the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2009.
- (x) "public" means public as defined under clause (d) of rule 2 of the Securities Contracts (Regulation) Rules, 1957;
- (y) "public shareholding" means public shareholding as defined under clause (e) of rule 2 of the Securities Contracts (Regulation) Rules, 1957;
- (z) "quarter" means the period of three months commencing on the first day of April, July, October or January of a financial year;
- (za) "quarterly results" means the financial results prepared in accordance with these regulations in respect of a quarter;

- (zb) “related party” means a related party as defined under sub-section (76) of section 2 of the Companies Act, 2013 or under the applicable accounting standards:

Provided that this definition shall not be applicable for the units issued by mutual funds which are listed on a recognised stock exchange(s);

- (zc) “related party transaction” means a transfer of resources, services or obligations between a listed entity and a related party, regardless of whether a price is charged and a “transaction” with a related party shall be construed to include a single transaction or a group of transactions in a contract:

Provided that this definition shall not be applicable for the units issued by mutual funds which are listed on a recognised stock exchange(s);

- (zd) “relative” means relative as defined under sub-section (77) of section 2 of the Companies Act, 2013 and rules prescribed there under:

Provided this definition shall not be applicable for the units issued by mutual fund which are listed on a recognised stock exchange(s);

- (ze) “schedule” means a schedule annexed to these regulations;

- (zf) “securities laws” means the Act, the Securities Contracts (Regulation) Act, 1956, the Depositories Act, 1996, and the provisions of the Companies Act, 1956 and Companies Act, 2013, and the rules, regulations, circulars or guidelines made thereunder.

- (zg) ‘securitised debt instruments’ as defined in the Securities and Exchange Board of India (Public Offer and Listing of Securitised Debt Instruments) Regulations, 2008;

- (zh) “servicer” means servicer as defined under clause(t) of sub-regulation (1) of regulation 2 of the Securities and Exchange Board of India (Public Offer And Listing Of Securitised Debt Instruments) Regulations, 2008;

- (zi) “small and medium enterprises” or “SME” shall mean an entity which has issued specified securities in accordance with the provisions of Chapter XB of the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2009;

- (zj) “SME Exchange” means an SME exchange as defined under clause (c) of sub-regulation (1) of regulation 106N of the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2009;

- (zk) “stock exchange” means a recognised stock exchange as defined under clause (f) of section 2 of the Securities Contracts (Regulation) Act, 1956;

- (zl) ‘specified securities’ means ‘equity shares’ and ‘convertible securities’ as defined under clause (zi) of sub-regulation (1) of regulation 2 of the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2009;

- (zm) “subsidiary” means a subsidiary as defined under sub-section(87) of section 2 of the Companies Act, 2013;

(2) All other words and expressions used but not defined in these regulations, but defined in the Act or the Companies Act, 2013, the Securities Contracts (Regulation) Act, 1956, the Depositories Act, 1996 and/or the rules and regulations made thereunder shall have the same meaning as respectively assigned to them in such Acts or rules or regulations or any statutory modification or re-enactment thereto, as the case may be.

**Applicability of the regulations.**

3. Unless otherwise provided, these regulations shall apply to the listed entity who has listed any of the following designated securities on recognised stock exchange(s):

- (a) specified securities listed on main board or SME Exchange or institutional trading platform;
- (b) non-convertible debt securities, non-convertible redeemable preference shares, perpetual debt instrument, perpetual non-cumulative preference shares;
- (c) Indian depository receipts;
- (d) securitised debt instruments;
- (e) units issued by mutual funds;
- (f) any other securities as may be specified by the Board.

## **CHAPTER II**

### **PRINCIPLES GOVERNING DISCLOSURES AND OBLIGATIONS OF LISTED ENTITY**

#### **Principles governing disclosures and obligations.**

4. (1) The listed entity which has listed securities shall make disclosures and abide by its obligations under these regulations, in accordance with the following principles:

- (a) Information shall be prepared and disclosed in accordance with applicable standards of accounting and financial disclosure.
- (b) The listed entity shall implement the prescribed accounting standards in letter and spirit in the preparation of financial statements taking into consideration the interest of all stakeholders and shall also ensure that the annual audit is conducted by an independent, competent and qualified auditor.
- (c) The listed entity shall refrain from misrepresentation and ensure that the information provided to recognised stock exchange(s) and investors is not misleading.
- (d) The listed entity shall provide adequate and timely information to recognised stock exchange(s) and investors.
- (e) The listed entity shall ensure that disseminations made under provisions of these regulations and circulars made thereunder, are adequate, accurate, explicit, timely and presented in a simple language.
- (f) Channels for disseminating information shall provide for equal, timely and cost efficient access to relevant information by investors.
- (g) The listed entity shall abide by all the provisions of the applicable laws including the securities laws and also such other guidelines as may be issued from time to time by the Board and the recognised stock exchange(s) in this regard and as may be applicable.
- (h) The listed entity shall make the specified disclosures and follow its obligations in letter and spirit taking into consideration the interest of all stakeholders.
- (i) Filings, reports, statements, documents and information which are event based or are filed periodically shall contain relevant information.
- (j) Periodic filings, reports, statements, documents and information reports shall contain information that shall enable investors to track the performance of a listed entity over regular intervals of time and shall provide sufficient information to enable investors to assess the current status of a listed entity.

(2) The listed entity which has listed its specified securities shall comply with the corporate governance provisions as specified in chapter IV which shall be implemented in a manner so as to achieve the objectives of the principles as mentioned below.

- (a) **The rights of shareholders:** The listed entity shall seek to protect and facilitate the exercise of the following rights of shareholders:
- (i) right to participate in, and to be sufficiently informed of, decisions concerning fundamental corporate changes.
  - (ii) opportunity to participate effectively and vote in general shareholder meetings.
  - (iii) being informed of the rules, including voting procedures that govern general shareholder meetings.
  - (iv) opportunity to ask questions to the board of directors, to place items on the agenda of general meetings, and to propose resolutions, subject to reasonable limitations.
  - (v) Effective shareholder participation in key corporate governance decisions, such as the nomination and election of members of board of directors.
  - (vi) exercise of ownership rights by all shareholders, including institutional investors.
  - (vii) adequate mechanism to address the grievances of the shareholders.
  - (viii) protection of minority shareholders from abusive actions by, or in the interest of, controlling shareholders acting either directly or indirectly, and effective means of redress.
- (b) **Timely information:** The listed entity shall provide adequate and timely information to shareholders, including but not limited to the following:
- (i) sufficient and timely information concerning the date, location and agenda of general meetings, as well as full and timely information regarding the issues to be discussed at the meeting.
  - (ii) Capital structures and arrangements that enable certain shareholders to obtain a degree of control disproportionate to their equity ownership.
  - (iii) rights attached to all series and classes of shares, which shall be disclosed to investors before they acquire shares.
- (c) **Equitable treatment:** The listed entity shall ensure equitable treatment of all shareholders, including minority and foreign shareholders, in the following manner:
- (i) All shareholders of the same series of a class shall be treated equally.
  - (ii) Effective shareholder participation in key corporate governance decisions, such as the nomination and election of members of board of directors, shall be facilitated.
  - (iii) Exercise of voting rights by foreign shareholders shall be facilitated.
  - (iv) The listed entity shall devise a framework to avoid insider trading and abusive self-dealing.
  - (v) Processes and procedures for general shareholder meetings shall allow for equitable treatment of all shareholders.
  - (vi) Procedures of listed entity shall not make it unduly difficult or expensive to cast votes.
- (d) **Role of stakeholders in corporate governance:** The listed entity shall recognise the rights of its stakeholders and encourage co-operation between listed entity and the stakeholders, in the following manner:

- (i) The listed entity shall respect the rights of stakeholders that are established by law or through mutual agreements.
  - (ii) Stakeholders shall have the opportunity to obtain effective redress for violation of their rights.
  - (iii) Stakeholders shall have access to relevant, sufficient and reliable information on a timely and regular basis to enable them to participate in corporate governance process.
  - (iv) The listed entity shall devise an effective whistle blower mechanism enabling stakeholders, including individual employees and their representative bodies, to freely communicate their concerns about illegal or unethical practices.
- (e) **Disclosure and transparency:** The listed entity shall ensure timely and accurate disclosure on all material matters including the financial situation, performance, ownership, and governance of the listed entity, in the following manner:
- (i) Information shall be prepared and disclosed in accordance with the prescribed standards of accounting, financial and non-financial disclosure.
  - (ii) Channels for disseminating information shall provide for equal, timely and cost efficient access to relevant information by users.
  - (iii) Minutes of the meeting shall be maintained explicitly recording dissenting opinions, if any. .
- (f) **Responsibilities of the board of directors:** The board of directors of the listed entity shall have the following responsibilities:
- (i) Disclosure of information:
    - (1) Members of board of directors and key managerial personnel shall disclose to the board of directors whether they, directly, indirectly, or on behalf of third parties, have a material interest in any transaction or matter directly affecting the listed entity.
    - (2) The board of directors and senior management shall conduct themselves so as to meet the expectations of operational transparency to stakeholders while at the same time maintaining confidentiality of information in order to foster a culture of good decision-making.
  - (ii) Key functions of the board of directors-
    - (1) Reviewing and guiding corporate strategy, major plans of action, risk policy, annual budgets and business plans, setting performance objectives, monitoring implementation and corporate performance, and overseeing major capital expenditures, acquisitions and divestments.
    - (2) Monitoring the effectiveness of the listed entity's governance practices and making changes as needed.
    - (3) Selecting, compensating, monitoring and, when necessary, replacing key managerial personnel and overseeing succession planning.
    - (4) Aligning key managerial personnel and remuneration of board of directors with the longer term interests of the listed entity and its shareholders.
    - (5) Ensuring a transparent nomination process to the board of directors with the diversity of thought, experience, knowledge, perspective and gender in the board of directors.
    - (6) Monitoring and managing potential conflicts of interest of management, members of the board of directors and shareholders, including misuse of corporate assets and abuse in related party

transactions.

- (7) Ensuring the integrity of the listed entity's accounting and financial reporting systems, including the independent audit, and that appropriate systems of control are in place, in particular, systems for risk management, financial and operational control, and compliance with the law and relevant standards.
- (8) Overseeing the process of disclosure and communications.
- (9) Monitoring and reviewing board of director's evaluation framework.

(iii) Other responsibilities:

- (1) The board of directors shall provide strategic guidance to the listed entity, ensure effective monitoring of the management and shall be accountable to the listed entity and the shareholders. (2) The board of directors shall set a corporate culture and the values by which executives throughout a group shall behave.
- (3) Members of the board of directors shall act on a fully informed basis, in good faith, with due diligence and care, and in the best interest of the listed entity and the shareholders.
- (4) The board of directors shall encourage continuing directors training to ensure that the members of board of directors are kept up to date.
- (5) Where decisions of the board of directors may affect different shareholder groups differently, the board of directors shall treat all shareholders fairly.
- (6) The board of directors shall maintain high ethical standards and shall take into account the interests of stakeholders.
- (7) The board of directors shall exercise objective independent judgement on corporate affairs.
- (8) The board of directors shall consider assigning a sufficient number of non-executive members of the board of directors capable of exercising independent judgement to tasks where there is a potential for conflict of interest.
- (9) The board of directors shall ensure that, while rightly encouraging positive thinking, these do not result in over-optimism that either leads to significant risks not being recognised or exposes the listed entity to excessive risk.
- (10) The board of directors shall have ability to 'step back' to assist executive management by challenging the assumptions underlying: strategy, strategic initiatives (such as acquisitions), risk appetite, exposures and the key areas of the listed entity's focus.
- (11) When committees of the board of directors are established, their mandate, composition and working procedures shall be well defined and disclosed by the board of directors.
- (12) Members of the board of directors shall be able to commit themselves effectively to their responsibilities.
- (13) In order to fulfil their responsibilities, members of the board of directors shall have access to accurate, relevant and timely information.
- (14) The board of directors and senior management shall facilitate the independent directors to perform their role effectively as a member of the board of directors and also a member of a committee of board of directors.

(3) In case of any ambiguity or incongruity between the principles and relevant regulations, the principles specified in this Chapter shall prevail.

### **CHAPTER III**

#### **COMMON OBLIGATIONS OF LISTED ENTITIES**

##### **General obligation of compliance.**

5. The listed entity shall ensure that key managerial personnel, directors, promoters or any other person dealing with the listed entity, complies with responsibilities or obligations, if any, assigned to them under these regulations.

##### **Compliance Officer and his Obligations.**

6. (1) A listed entity shall appoint a qualified company secretary as the compliance officer.

(2) The compliance officer of the listed entity shall be responsible for-

- (a) ensuring conformity with the regulatory provisions applicable to the listed entity in letter and spirit.
- (b) co-ordination with and reporting to the Board, recognised stock exchange(s) and depositories with respect to compliance with rules, regulations and other directives of these authorities in manner as specified from time to time.
- (c) ensuring that the correct procedures have been followed that would result in the correctness, authenticity and comprehensiveness of the information, statements and reports filed by the listed entity under these regulations.
- (d) monitoring email address of grievance redressal division as designated by the listed entity for the purpose of registering complaints by investors:

Provided that the requirements of this regulation shall not be applicable in the case of units issued by mutual funds which are listed on recognised stock exchange(s) but shall be governed by the provisions of the Securities and Exchange Board of India (Mutual Funds) Regulations, 1996.

##### **Share Transfer Agent.**

7. (1) The listed entity shall appoint a share transfer agent or manage the share transfer facility in-house:

Provided that, in the case of in-house share transfer facility, as and when the total number of holders of securities of the listed entity exceeds one lakh, the listed entity shall either register with the Board as a Category II share transfer agent or appoint Registrar to an issue and share transfer agent registered with the Board.

(2) The listed entity shall ensure that all activities in relation to both physical and electronic share transfer facility are maintained either in house or by Registrar to an issue and share transfer agent registered with the Board.

(3) The listed entity shall submit a compliance certificate to the exchange, duly signed by both the compliance officer of the listed entity and the authorised representative of the share transfer agent, wherever applicable, within one month of end of each half of the financial year, certifying compliance with the requirements of sub- regulation (2).

(4) In case of any change or appointment of a new share transfer agent, the listed entity shall enter into a tripartite agreement between the existing share transfer agent, the new share transfer agent and the listed entity, in the manner as specified by the Board from time to time:

Provided that in case the existing share transfer facility is managed in-house, the agreement referred above shall be

entered into between the listed entity and the new share transfer agent.

(5) The listed entity shall intimate such appointment, referred to in sub-regulation (4), to the stock exchange(s) within seven days of entering into the agreement.

(6) The agreement referred to in sub-regulation (4) shall be placed in the subsequent meeting of the board of directors:

Provided that the requirements of this regulation shall not be applicable to the units issued by mutual funds that are listed on recognised stock exchange(s).

**Co-operation with intermediaries registered with the Board.**

8. The listed entity, wherever applicable, shall co-operate with and submit correct and adequate information to the intermediaries registered with the Board such as credit rating agencies, registrar to an issue and share transfer agents, debenture trustees etc, within timelines and procedures specified under the Act, regulations and circulars issued there under:

Provided that requirements of this regulation shall not be applicable to the units issued by mutual funds listed on a recognised stock exchange(s) for which the provisions of the Securities and Exchange Board of India (Mutual Funds) Regulations, 1996 shall be applicable.

**Preservation of documents.**

9. The listed entity shall have a policy for preservation of documents, approved by its board of directors, classifying them in at least two categories as follows- (a) documents whose preservation shall be permanent in nature ; (b) documents with preservation period of not less than eight years after completion of the relevant transactions: Provided that the listed entity may keep documents specified in clauses (a) and (b) in electronic mode.

**Filing of information.**

10. (1) The listed entity shall file the reports, statements, documents, filings and any other information with the recognised stock exchange(s) on the electronic platform as specified by the Board or the recognised stock exchange(s).

(2) The listed entity shall put in place infrastructure as required for compliance with sub-regulation (1).

**Scheme of Arrangement.**

11. The listed entity shall ensure that any scheme of arrangement /amalgamation /merger /reconstruction /reduction of capital etc. to be presented to any Court or Tribunal does not in any way violate, override or limit the provisions of securities laws or requirements of the stock exchange(s):

Provided that this regulation shall not be applicable for the units issued by Mutual Fund which are listed on a recognised stock exchange(s).

**Payment of dividend or interest or redemption or repayment.**

12. The listed entity shall use any of the electronic mode of payment facility approved by the Reserve Bank of India, in the manner specified in Schedule I, for the payment of the following: (a) dividends; (b) interest; (c) redemption or repayment amounts:

Provided that where it is not possible to use electronic mode of payment, 'payable-at-par' warrants or cheques may be issued:

Provided further that where the amount payable as dividend exceeds one thousand and five hundred rupees, the



'payable-at-par' warrants or cheques shall be sent by speed post.

**Grievance Redressal Mechanism.**

**13.** (1) The listed entity shall ensure that adequate steps are taken for expeditious redressal of investor complaints.

(2) The listed entity shall ensure that it is registered on the SCORES platform or such other electronic platform or system of the Board as shall be mandated from time to time, in order to handle investor complaints electronically in the manner specified by the Board.

(3) The listed entity shall file with the recognised stock exchange(s) on a quarterly basis, within twenty one days from the end of each quarter, a statement giving the number of investor complaints pending at the beginning of the quarter, those received during the quarter, disposed of during the quarter and those remaining unresolved at the end of the quarter.

(4) The statement as specified in sub-regulation (3) shall be placed, on quarterly basis, before the board of directors of the listed entity.

**Fees and other charges to be paid to the recognized stock exchange(s).**

**14.** The listed entity shall pay all such fees or charges, as applicable, to the recognised stock exchange(s), in the manner specified by the Board or the recognised stock exchange(s).

**CHAPTER IV**

**OBLIGATIONS OF LISTED ENTITY WHICH HAS LISTED ITS SPECIFIED SECURITIES**

**Applicability.**

**15.** (1) The provisions of this chapter shall apply to a listed entity which has listed its specified securities on any recognised stock exchange(s) either on the main board or on SME Exchange or on institutional trading platform:

(2) The compliance with the corporate governance provisions as specified in regulations 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27 and clauses (b) to (i) of sub-regulation (2) of regulation 46 and para C, D and E of Schedule V shall not apply, in respect of –

(a) the listed entity having paid up equity share capital not exceeding rupees ten crore and net worth not exceeding rupees twenty five crore, as on the last day of the previous financial year: Provided that where the provisions of the regulations specified in this regulation becomes applicable to a listed entity at a later date, such listed entity shall comply with the requirements those regulations within six months from the date on which the provisions became applicable to the listed entity.

(b) the listed entity which has listed its specified securities on the SME Exchange: Provided that for other listed entities which are not companies, but body corporate or are subject to regulations under other statutes, the provisions of corporate governance provisions as specified in regulation 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27 and clauses (b) to (i) of sub-regulation (2) of regulation 46 and para C, D and E of Schedule V shall apply to the extent that it does not violate their respective statutes and guidelines or directives issued by the relevant authorities.

(3) Notwithstanding sub-regulation (2) above, the provisions of Companies Act, 2013 shall continue to apply, wherever applicable.

**Definitions.**

**16.** (1) For the purpose of this chapter, unless the context otherwise requires –

- (a) "control" shall have the same meaning as assigned to it under the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011;
- (b) "independent director" means a non-executive director, other than a nominee director of the listed entity:
- (i) who, in the opinion of the board of directors, is a person of integrity and possesses relevant expertise and experience;
  - (ii) who is or was not a promoter of the listed entity or its holding, subsidiary or associate company; (iii) who is not related to promoters or directors in the listed entity, its holding, subsidiary or associate company;
  - (iv) who, apart from receiving director's remuneration, has or had no material pecuniary relationship with the listed entity, its holding, subsidiary or associate company, or their promoters, or directors, during the two immediately preceding financial years or during the current financial year;
  - (v) none of whose relatives has or had pecuniary relationship or transaction with the listed entity, its holding, subsidiary or associate company, or their promoters, or directors, amounting to two per cent. or more of its gross turnover or total income or fifty lakh rupees or such higher amount as may be prescribed from time to time, whichever is lower, during the two immediately preceding financial years or during the current financial year;
  - (vi) who, neither himself, nor whose relative(s) —
    - (A) holds or has held the position of a key managerial personnel or is or has been an employee of the listed entity 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;
    - (B) 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 —
      - (1) a firm of auditors or company secretaries in practice or cost auditors of the listed entity or its holding, subsidiary or associate company; or
      - (2) any legal or a consulting firm that has or had any transaction with the listed entity, its holding, subsidiary or associate company amounting to ten per cent or more of the gross turnover of such firm;
    - (C) holds together with his relatives two per cent or more of the total voting power of the listed entity; or
    - (D) is a chief executive or director, by whatever name called, of any non-profit organisation that receives twenty-five per cent or more of its receipts or corpus from the listed entity, any of its promoters, directors or its holding, subsidiary or associate company or that holds two per cent or more of the total voting power of the listed entity;
    - (E) is a material supplier, service provider or customer or a lessor or lessee of the listed entity;
  - (vii) who is not less than 21 years of age.
- (c) "material subsidiary" shall mean a subsidiary, whose income or net worth exceeds twenty percent of the consolidated income or net worth respectively, of the listed entity and its subsidiaries in the immediately preceding accounting year. Explanation.- The listed entity shall formulate a policy for determining 'material' subsidiary.
- (d) "senior management" shall mean officers/personnel of the listed entity who are members of its core management team excluding board of directors and normally this shall comprise all members of management

one level below the executive directors, including all functional heads.

### **Board of Directors.**

**17. (1)** The composition of board of directors of the listed entity shall be as follows:

- (a) board of directors shall have an optimum combination of executive and non-executive directors with at least one woman director and not less than fifty per cent. of the board of directors shall comprise of non-executive directors;
- (b) where the chairperson of the board of directors is a non-executive director, at least one-third of the board of directors shall comprise of independent directors and where the listed entity does not have a regular non-executive chairperson, at least half of the board of directors shall comprise of independent directors: Provided that where the regular non-executive chairperson is a promoter of the listed entity or is related to any promoter or person occupying management positions at the level of board of director or at one level below the board of directors, at least half of the board of directors of the listed entity shall consist of independent directors.

Explanation.- For the purpose of this clause, the expression “related to any promoter” shall have the following meaning:

- (i) if the promoter is a listed entity, its directors other than the independent directors, its employees or its nominees shall be deemed to be related to it;
- (ii) if the promoter is an unlisted entity, its directors, its employees or its nominees shall be deemed to be related to it.

(2) The board of directors shall meet at least four times a year, with a maximum time gap of one hundred and twenty days between any two meetings.

(3) The board of directors shall periodically review compliance reports pertaining to all laws applicable to the listed entity, prepared by the listed entity as well as steps taken by the listed entity to rectify instances of non-compliances.

(4) The board of directors of the listed entity shall satisfy itself that plans are in place for orderly succession for appointment to the board of directors and senior management.

(5) (a) The board of directors shall lay down a code of conduct for all members of board of directors and senior management of the listed entity.

(b) The code of conduct shall suitably incorporate the duties of independent directors as laid down in the Companies Act, 2013.

(6) (a) The board of directors shall recommend all fees or compensation, if any, paid to non-executive directors, including independent directors and shall require approval of shareholders in general meeting.

(b) The requirement of obtaining approval of shareholders in general meeting shall not apply to payment of sitting fees to non-executive directors, if made within the limits prescribed under the Companies Act, 2013 for payment of sitting fees without approval of the Central Government.

(c) The approval of shareholders mentioned in clause (a), shall specify the limits for the maximum number of stock options that may be granted to non-executive directors, in any financial year and in aggregate.

(d) Independent directors shall not be entitled to any stock option.

(7) The minimum information to be placed before the board of directors is specified in Part A of Schedule II.

(8) The chief executive officer and the chief financial officer shall provide the compliance certificate to the board of directors as specified in Part B of Schedule II.

(9) (a) The listed entity shall lay down procedures to inform members of board of directors about risk assessment and minimization procedures.

(b) The board of directors shall be responsible for framing, implementing and monitoring the risk management plan for the listed entity.

(10) The performance evaluation of independent directors shall be done by the entire board of directors: Provided that in the above evaluation the directors who are subject to evaluation shall not participate:

**Audit Committee.**

18. (1) Every listed entity shall constitute a qualified and independent audit committee in accordance with the terms of reference, subject to the following:

(a) The audit committee shall have minimum three directors as members.

(b) Two-thirds of the members of audit committee shall be independent directors.

(c) All members of audit committee shall be financially literate and at least one member shall have accounting or related financial management expertise.

*Explanation (1).*- For the purpose of this regulation, “financially literate” shall mean the ability to read and understand basic financial statements i.e. balance sheet, profit and loss account, and statement of cash flows.

*Explanation (2).*- For the purpose of this regulation, a member shall be considered to have accounting or related financial management expertise if he or she possesses experience in finance or accounting, or requisite professional certification in accounting, or any other comparable experience or background which results in the individual's financial sophistication, including being or having been a chief executive officer, chief financial officer or other senior officer with financial oversight responsibilities.

(d) The chairperson of the audit committee shall be an independent director and he shall be present at Annual general meeting to answer shareholder queries.

(e) The Company Secretary shall act as the secretary to the audit committee.

(f) The audit committee at its discretion shall invite the finance director or head of the finance function, head of internal audit and a representative of the statutory auditor and any other such executives to be present at the meetings of the committee:

Provided that occasionally the audit committee may meet without the presence of any executives of the listed entity.

(2) The listed entity shall conduct the meetings of the audit committee in the following manner:

(a) The audit committee shall meet at least four times in a year and not more than one hundred and twenty days shall elapse between two meetings.

(b) The quorum for audit committee meeting shall either be two members or one third of the members of the audit committee, whichever is greater, with at least two independent directors.

(c) The audit committee shall have powers to investigate any activity within its terms of reference, seek information from any employee, obtain outside legal or other professional advice and secure attendance of outsiders

with relevant expertise, if it considers necessary.

(3) The role of the audit committee and the information to be reviewed by the audit committee shall be as specified in Part C of Schedule II.

**Nomination and remuneration committee.**

**19.** (1) The board of directors shall constitute the nomination and remuneration committee as follows: (a) the committee shall comprise of at least three directors ; (b) all directors of the committee shall be non-executive directors; and (c) at least fifty percent of the directors shall be independent directors.

(2) The Chairperson of the nomination and remuneration committee shall be an independent director: Provided that the chairperson of the listed entity, whether executive or non-executive, may be appointed as a member of the Nomination and Remuneration Committee and shall not chair such Committee.

(3) The Chairperson of the nomination and remuneration committee may be present at the annual general meeting, to answer the shareholders' queries; however, it shall be up to the chairperson to decide who shall answer the queries.

(4) The role of the nomination and remuneration committee shall be as specified as in Part D of the Schedule II.

**Stakeholders Relationship Committee.**

**20.** (1) The listed entity shall constitute a Stakeholders Relationship Committee to specifically look into the mechanism of redressal of grievances of shareholders, debenture holders and other security holders.

(2) The chairperson of this committee shall be a non-executive director.

(3) The board of directors shall decide other members of this committee.

(4) The role of the Stakeholders Relationship Committee shall be as specified as in Part D of the Schedule II.

**Risk Management Committee.**

**21.** (1) The board of directors shall constitute a Risk Management Committee.

(2) The majority of members of Risk Management Committee shall consist of members of the board of directors.

(3) The Chairperson of the Risk management committee shall be a member of the board of directors and senior executives of the listed entity may be members of the committee.

(4) The board of directors shall define the role and responsibility of the Risk Management Committee and may delegate monitoring and reviewing of the risk management plan to the committee and such other functions as it may deem fit.

(5) The provisions of this regulation shall be applicable to top 100 listed entities, determined on the basis of market capitalisation, as at the end of the immediate previous financial year.

**Vigil mechanism.**

**22.** (1) The listed entity shall formulate a vigil mechanism for directors and employees to report genuine concerns.

(2) The vigil mechanism shall provide for adequate safeguards against victimization of director(s) or employee(s) or any other person who avail the mechanism and also provide for direct access to the chairperson of the audit committee in appropriate or exceptional cases.

**Related party transactions.**

**23.** (1) The listed entity shall formulate a policy on materiality of related party transactions and on dealing with related party transactions: Explanation.- A transaction with a related party shall be considered material if the transaction(s) to be entered into individually or taken together with previous transactions during a financial year, exceeds ten percent of the annual consolidated turnover of the listed entity as per the last audited financial statements of the listed entity.

(2) All related party transactions shall require prior approval of the audit committee.

(3) Audit committee may grant omnibus approval for related party transactions proposed to be entered into by the listed entity subject to the following conditions, namely-

- (a) the audit committee shall lay down the criteria for granting the omnibus approval in line with the policy on related party transactions of the listed entity and such approval shall be applicable in respect of transactions which are repetitive in nature;
- (b) the audit committee shall satisfy itself regarding the need for such omnibus approval and that such approval is in the interest of the listed entity;
- (c) the omnibus approval shall specify:
  - (i) the name(s) of the related party, nature of transaction, period of transaction, maximum amount of transactions that shall be entered into,
  - (ii) the indicative base price / current contracted price and the formula for variation in the price if any; and
  - (iii) such other conditions as the audit committee may deem fit: Provided that where the need for related party transaction cannot be foreseen and aforesaid details are not available, audit committee may grant omnibus approval for such transactions subject to their value not exceeding rupees one crore per transaction.
- (d) the audit committee shall review, at least on a quarterly basis, the details of related party transactions entered into by the listed entity pursuant to each of the omnibus approvals given.
- (e) Such omnibus approvals shall be valid for a period not exceeding one year and shall require fresh approvals after the expiry of one year:

(4) All material related party transactions shall require approval of the shareholders through resolution and the related parties shall abstain from voting on such resolutions whether the entity is a related party to the particular transaction or not.

(5) The provisions of sub-regulations (2), (3) and (4) shall not be applicable in the following cases:

- (a) transactions entered into between two government companies;
- (b) transactions entered into between a holding company and its wholly owned subsidiary whose accounts are consolidated with such holding company and placed before the shareholders at the general meeting for approval.

*Explanation.-* For the purpose of clause (a), "government company(ies)" means Government company as defined in sub-section (45) of section 2 of the Companies Act, 2013.

(6) The provisions of this regulation shall be applicable to all prospective transactions.

(7) For the purpose of this regulation, all entities falling under the definition of related parties shall abstain from voting irrespective of whether the entity is a party to the particular transaction or not.

(8) All existing material related party contracts or arrangements entered into prior to the date of notification of these regulations and which may continue beyond such date shall be placed for approval of the shareholders in the first General Meeting subsequent to notification of these regulations.

**Corporate governance requirements with respect to subsidiary of listed entity.**

**24.** (1) At least one independent director on the board of directors of the listed entity shall be a director on the board of directors of an unlisted material subsidiary, incorporated in India.

(2) The audit committee of the listed entity shall also review the financial statements, in particular, the investments made by the unlisted subsidiary.

(3) The minutes of the meetings of the board of directors of the unlisted subsidiary shall be placed at the meeting of the board of directors of the listed entity.

(4) The management of the unlisted subsidiary shall periodically bring to the notice of the board of directors of the listed entity, a statement of all significant transactions and arrangements entered into by the unlisted subsidiary.

*Explanation.*- For the purpose of this regulation, the term “significant transaction or arrangement” shall mean any individual transaction or arrangement that exceeds or is likely to exceed ten percent of the total revenues or total expenses or total assets or total liabilities, as the case may be, of the unlisted material subsidiary for the immediately preceding accounting year.

(5) A listed entity shall not dispose of shares in its material subsidiary resulting in reduction of its shareholding (either on its own or together with other subsidiaries) to less than fifty percent or cease the exercise of control over the subsidiary without passing a special resolution in its General Meeting except in cases where such divestment is made under a scheme of arrangement duly approved by a Court/Tribunal.

(6) Selling, disposing and leasing of assets amounting to more than twenty percent of the assets of the material subsidiary on an aggregate basis during a financial year shall require prior approval of shareholders by way of special resolution, unless the sale/disposal/lease is made under a scheme of arrangement duly approved by a Court/Tribunal.

(7) Where a listed entity has a listed subsidiary, which is itself a holding company, the provisions of this regulation shall apply to the listed subsidiary in so far as its subsidiaries are concerned.

**Obligations with respect to independent directors.**

**25.** (1) A person shall not serve as an independent director in more than seven listed entities: Provided that any person who is serving as a whole time director in any listed entity shall serve as an independent director in not more than three listed entities.

(2) The maximum tenure of independent directors shall be in accordance with the Companies Act, 2013 and rules made thereunder, in this regard, from time to time.

(3) The independent directors of the listed entity shall hold at least one meeting in a year, without the presence of non-independent directors and members of the management and all the independent directors shall strive to be present at such meeting.

(4) The independent directors in the meeting referred in sub-regulation (3) shall, inter alia - (a) review the performance of non-independent directors and the board of directors as a whole; (b) review the performance of the chairperson of the listed entity, taking into account the views of executive directors and non-executive directors; (c) assess the quality, quantity and timeliness of flow of information between the management of the listed entity and the board of directors that is necessary for the board of directors to effectively and reasonably perform their duties.

(5) An independent director shall be held liable, only in respect of such acts of omission or commission by the listed entity which had occurred with his knowledge, attributable through processes of board of directors, and with his consent or connivance or where he had not acted diligently with respect to the provisions contained in these regulations.

(6) An independent director who resigns or is removed from the board of directors of the listed entity shall be replaced by a new independent director by listed entity at the earliest but not later than the immediate next meeting of the board of directors or three months from the date of such vacancy, whichever is later: Provided that where the listed entity fulfils the requirement of independent directors in its board of directors without filling the vacancy created by such resignation or removal, the requirement of replacement by a new independent director shall not apply.

(7) The listed entity shall familiarise the independent directors through various programmes about the listed entity, including the following:

- (a) nature of the industry in which the listed entity operates;
- (b) business model of the listed entity;
- (c) roles, rights, responsibilities of independent directors; and
- (d) any other relevant information.

**Obligations with respect to directors and senior management.**

26. (1) A director shall not be a member in more than ten committees or act as chairperson of more than five committees across all listed entities in which he is a director which shall be determined as follows:

- (a) the limit of the committees on which a director may serve in all public limited companies, whether listed or not, shall be included and all other companies including private limited companies, foreign companies and companies under Section 8 of the Companies Act, 2013 shall be excluded;
- (b) for the purpose of determination of limit, chairpersonship and membership of the audit committee and the Stakeholders' Relationship Committee alone shall be considered.

(2) Every director shall inform the listed entity about the committee positions he or she occupies in other listed entities and notify changes as and when they take place.

(3) All members of the board of directors and senior management personnel shall affirm compliance with the code of conduct of board of directors and senior management on an annual basis.

(4) Non-executive directors shall disclose their shareholding, held either by them or on a beneficial basis for any other persons in the listed entity in which they are proposed to be appointed as directors, in the notice to the general meeting called for appointment of such director

(5) Senior management shall make disclosures to the board of directors relating to all material, financial and commercial transactions, where they have personal interest that may have a potential conflict with the interest of the listed entity at large.

*Explanation.*- For the purpose of this sub-regulation, conflict of interest relates to dealing in the shares of listed entity, commercial dealings with bodies, which have shareholding of management and their relatives etc.

**Other corporate governance requirements.**

27. (1) The listed entity may, at its discretion, comply with requirements as specified in Part E of Schedule II.



(2) (a) The listed entity shall submit a quarterly compliance report on corporate governance in the format as specified by the Board from time to time to the recognised stock exchange(s) within fifteen days from close of the quarter.

(b) Details of all material transactions with related parties shall be disclosed along with the report mentioned in clause (a) of sub-regulation (2).

(c) The report mentioned in clause (a) of sub-regulation (2) shall be signed either by the compliance officer or the chief executive officer of the listed entity.

**In-principle approval of recognized stock exchange(s).**

**28.** (1) The listed entity, before issuing securities, shall obtain an 'in-principle' approval from recognised stock exchange(s) in the following manner:

- (a) where the securities are listed only on recognised stock exchange(s) having nationwide trading terminals, from all such stock exchange(s);
- (b) where the securities are not listed on any recognised stock exchange having nationwide trading terminals, from all the stock exchange(s) in which the securities of the issuer are proposed to be listed;
- (c) where the securities are listed on recognised stock exchange(s) having nationwide trading terminals as well as on the recognised stock exchange(s) not having nationwide trading terminals, from all recognised stock exchange(s) having nationwide trading terminals:

(2) The requirement of obtaining in-principle approval from recognised stock exchange(s), shall not be applicable for securities issued pursuant to the scheme of arrangement for which the listed entity has already obtained No-Objection Letter from recognised stock exchange(s) in accordance with regulation 37.

**Prior Intimations.**

**29.** (1) The listed entity shall give prior intimation to stock exchange about the meeting of the board of directors in which any of the following proposals is due to be considered:

- (a) financial results viz. quarterly, half yearly, or annual, as the case may be;
- (b) proposal for buyback of securities;
- (c) proposal for voluntary delisting by the listed entity from the stock exchange(s);
- (d) fund raising by way of further public offer, rights issue, American Depository Receipts/Global Depository Receipts/Foreign Currency Convertible Bonds, qualified institutions placement, debt issue, preferential issue or any other method and for determination of issue price: Provided that intimation shall also be given in case of any annual general meeting or extraordinary general meeting or postal ballot that is proposed to be held for obtaining shareholder approval for further fund raising indicating type of issuance.
- (e) declaration/recommendation of dividend, issue of convertible securities including convertible debentures or of debentures carrying a right to subscribe to equity shares or the passing over of dividend.
- (f) the proposal for declaration of bonus securities where such proposal is communicated to the board of directors of the listed entity as part of the agenda papers:

Provided that in case the declaration of bonus by the listed entity is not on the agenda of the meeting of board of directors, prior intimation is not required to be given to the stock exchange(s).

(2) The intimation required under sub-regulation (1), shall be given at least two working days in advance, excluding

the date of the intimation and date of the meeting: Provided that intimation regarding item specified in clause (a) of sub-regulation (1), to be discussed at the meeting of board of directors shall be given at least five days in advance (excluding the date of the intimation and date of the meeting), and such intimation shall include the date of such meeting of board of directors.

(3) The listed entity shall give intimation to the stock exchange(s) at least eleven working days before any of the following proposal is placed before the board of directors -

- (a) any alteration in the form or nature of any of its securities that are listed on the stock exchange or in the rights or privileges of the holders thereof.
- (b) any alteration in the date on which, the interest on debentures or bonds, or the redemption amount of redeemable shares or of debentures or bonds, shall be payable.

**Disclosure of events or information.**

**30.** (1) Every listed entity shall make disclosures of any events or information which, in the opinion of the board of directors of the listed company, is material.

(2) Events specified in Para A of Part A of Schedule III are deemed to be material events and listed entity shall make disclosure of such events.

(3) The listed entity shall make disclosure of events specified in Para B of Part A of Schedule III, based on application of the guidelines for materiality, as specified in sub-regulation (4).

(4) (i) The listed entity shall consider the following criteria for determination of materiality of events/ information:

- (a) the omission of an event or information, which is likely to result in discontinuity or alteration of event or information already available publicly; or
- (b) the omission of an event or information is likely to result in significant market reaction if the said omission came to light at a later date;
- (c) In case where the criteria specified in sub-clauses (a) and (b) are not applicable, an event/information may be treated as being material if in the opinion of the board of directors of listed entity, the event / information is considered material.

(ii) The listed entity shall frame a policy for determination of materiality, based on criteria specified in this sub-regulation, duly approved by its board of directors, which shall be disclosed on its website.

(5) The board of directors of the listed entity shall authorize one or more Key Managerial Personnel for the purpose of determining materiality of an event or information and for the purpose of making disclosures to stock exchange(s) under this regulation and the contact details of such personnel shall be also disclosed to the stock exchange(s) and as well as on the listed entity's website.

(6) The listed entity shall first disclose to stock exchange(s) of all events, as specified in Part A of Schedule III, or information as soon as reasonably possible and not later than twenty four hours from the occurrence of event or information: Provided that in case the disclosure is made after twenty four hours of occurrence of the event or information, the listed entity shall, along with such disclosures provide explanation for delay: Provided further that disclosure with respect to events specified in sub-para 4 of Para A of Part A of Schedule III shall be made within thirty minutes of the conclusion of the board meeting.

(7) The listed entity shall, with respect to disclosures referred to in this regulation, make disclosures updating material developments on a regular basis, till such time the event is resolved/closed, with relevant explanations.

(8) The listed entity shall disclose on its website all such events or information which has been disclosed to stock exchange(s) under this regulation, and such disclosures shall be hosted on the website of the listed entity for a minimum period of five years and thereafter as per the archival policy of the listed entity, as disclosed on its website.

(9) The listed entity shall disclose all events or information with respect to subsidiaries which are material for the listed entity.

(10) The listed entity shall provide specific and adequate reply to all queries raised by stock exchange(s) with respect to any events or information: Provided that the stock exchange(s) shall disseminate information and clarification as soon as reasonably practicable.

(11) The listed entity may on its own initiative also, confirm or deny any reported event or information to stock exchange(s).

(12) In case where an event occurs or an information is available with the listed entity, which has not been indicated in Para A or B of Part A of Schedule III, but which may have material effect on it, the listed entity is required to make adequate disclosures in regard thereof.

#### **Holding of specified securities and shareholding pattern.**

**31.** (1) The listed entity shall submit to the stock exchange(s) a statement showing holding of securities and shareholding pattern separately for each class of securities, in the format specified by the Board from time to time within the following timelines –

- (a) one day prior to listing of its securities on the stock exchange(s);
- (b) on a quarterly basis, within twenty one days from the end of each quarter; and,
- (c) within ten days of any capital restructuring of the listed entity resulting in a change exceeding two per cent of the total paid-up share capital:

Provided that in case of listed entities which have listed their specified securities on SME Exchange, the above statements shall be submitted on a half yearly basis within twenty one days from the end of each half year.

(2) The listed entity shall ensure that hundred percent of shareholding of promoter(s) and promoter group is in dematerialized form and the same is maintained on a continuous basis in the manner as specified by the Board.

(3) The listed entity shall comply with circulars or directions issued by the Board from time to time with respect to maintenance of shareholding in dematerialized form.

#### **Disclosure of Class of shareholders and Conditions for Reclassification.**

**31A.** (1) All entities falling under promoter and promoter group shall be disclosed separately in the shareholding pattern appearing on the website of all stock exchanges having nationwide trading terminals where the specified securities of the entity are listed, in accordance with the formats specified by SEBI.

(2) The stock exchange, specified in sub-regulation (1), shall allow modification or reclassification of the status of the shareholders, only upon receipt of a request from the concerned listed entity or the concerned shareholders along with all relevant evidence and on being satisfied with the compliance of conditions mentioned in this regulation.

(3) In case of entities listed on more than one stock exchange, the concerned stock exchanges shall jointly decide on the application of the entity/ shareholders, as specified in sub-regulation(2).

(4) In case of transmission/succession/inheritance, the inheritor shall be classified as promoter.

(5) When a new promoter replaces the previous promoter subsequent to an open offer or in any other manner, re-classification may be permitted subject to approval of shareholders in the general meeting and compliance of the following conditions:

- (a) Such promoter along with the promoter group and the Persons Acting in Concert shall not hold more than ten per cent of the paid-up equity capital of the entity.
- (b) Such promoter shall not continue to have any special rights through formal or informal arrangements. All shareholding agreements granting special rights to such entities shall be terminated.
- (c) Such promoters and their relatives shall not act as key managerial person for a period of more than three years from the date of shareholders' approval: Provided that the resolution of the said shareholders' meeting must specifically grant approval for such promoter to act as key managerial person.

(6) Where an entity becomes professionally managed and does not have any identifiable promoter the existing promoters may be re-classified as public shareholders subject to approval of the shareholders in a general meeting. Explanation.- For the purposes of this sub-regulation an entity may be considered as professionally managed, if-

- (i) No person or group along with persons acting in concert taken together shall hold more than one per cent paid-up equity capital of the entity including any holding of convertibles/outstanding warrants/ Depository Receipts: Provided that any mutual fund, bank, insurance company, financial institution, foreign portfolio investor may individually hold up to ten per cent paid-up equity capital of the entity including any holding of convertibles/outstanding warrants/Depository Receipts.
- (ii) The promoters seeking reclassification and their relatives may act as key managerial personnel in the entity only subject to shareholders' approval and for a period not exceeding three years from the date of shareholders' approval.
- (iii) The promoter seeking reclassification along with his promoter group entities and the persons acting in concert shall not have any special right through formal or informal arrangements. All shareholding agreements granting special rights to such outgoing entities shall be terminated.

(7) Without prejudice to sub-regulations (5) and (6), re-classification of promoter as public shareholders shall be subject to the following conditions:

- (a) Such promoter shall not, directly or indirectly, exercise control, over the affairs of the entity.
- (b) Increase in the level of public shareholding pursuant to re-classification of promoter shall not be counted towards achieving compliance with minimum public shareholding requirement under rule 19A of the Securities Contracts (Regulation) Rules, 1957, and the provisions of these regulations.
- (c) The event of re-classification shall be disclosed to the stock exchanges as a material event in accordance with the provisions of these regulations.
- (d) Board may relax any condition for re-classification in specific cases, if it is satisfied about non-exercise of control by the outgoing promoter or its persons acting in concert.

(8) If any public shareholder seeks to re-classify itself as promoter, it shall be required to make an open offer in accordance with the provisions of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011.

**Statement of deviation(s) or variation(s).**

**32.** (1) The listed entity shall submit to the stock exchange the following statement(s) on a quarterly basis for public issue, rights issue, preferential issue etc. , -

- (a) indicating deviations, if any, in the use of proceeds from the objects stated in the offer document or explanatory statement to the notice for the general meeting, as applicable;
  - (b) indicating category wise variation (capital expenditure, sales and marketing, working capital etc.) between projected utilisation of funds made by it in its offer document or explanatory statement to the notice for the general meeting, as applicable and the actual utilisation of funds.
- (2) The statement(s) specified in sub-regulation (1), shall be continued to be given till such time the issue proceeds have been fully utilised or the purpose for which these proceeds were raised has been achieved.
- (3) The statement(s) specified in sub-regulation (1), shall be placed before the audit committee for review and after such review, shall be submitted to the stock exchange(s).
- (4) The listed entity shall furnish an explanation for the variation specified in sub-regulation (1), in the directors' report in the annual report.
- (5) The listed entity shall prepare an annual statement of funds utilized for purposes other than those stated in the offer document/prospectus/notice, certified by the statutory auditors of the listed entity, and place it before the audit committee till such time the full money raised through the issue has been fully utilized.
- (6) Where the listed entity has appointed a monitoring agency to monitor utilisation of proceeds of a public or rights issue, the listed entity shall submit to the stock exchange(s) any comments or report received from the monitoring agency.
- (7) Where the listed entity has appointed a monitoring agency to monitor the utilisation of proceeds of a public or rights issue, the monitoring report of such agency shall be placed before the audit committee on an annual basis, promptly upon its receipt. Explanation.- For the purpose of this sub-regulation, "monitoring agency" shall mean the monitoring agency specified in regulation 16 of the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2009.
- (8) For the purpose of this regulation, any reference to "quarterly/quarter" in case of listed entity which have listed their specified securities on SME Exchange shall respectively be read as "half yearly/half year".

**Financial results.**

**33.** (1) While preparing financial results, the listed entity shall comply with the following:

- (a) The financial results shall be prepared on the basis of accrual accounting policy and shall be in accordance with uniform accounting practices adopted for all the periods.
- (b) The quarterly and year to date results shall be prepared in accordance with the recognition and measurement principles laid down in Accounting Standard 25 or Indian Accounting Standard 31 (AS 25/ Ind AS 34 – Interim Financial Reporting), as applicable, specified in Section 133 of the Companies Act, 2013 read with relevant rules framed thereunder or as specified by the Institute of Chartered Accountants of India, whichever is applicable.
- (c) The standalone financial results and consolidated financial results shall be prepared as per Generally Accepted Accounting Principles in India: Provided that in addition to the above, the listed entity may also submit the financial results, as per the International Financial Reporting Standards notified by the International Accounting Standards Board.
- (d) The listed entity shall ensure that the limited review or audit reports submitted to the stock exchange(s) on a quarterly or annual basis are to be given only by an auditor who has subjected himself to the peer review process of Institute of Chartered Accountants of India and holds a valid certificate issued by the Peer Review

Board of the Institute of Chartered Accountants of India.

(e) The listed entity shall make the disclosures specified in Part A of Schedule IV.

(2) The approval and authentication of the financial results shall be done by listed entity in the following manner:

(a) The quarterly financial results submitted shall be approved by the board of directors:

Provided that while placing the financial results before the board of directors, the chief executive officer and chief financial officer of the listed entity shall certify that the financial results do not contain any false or misleading statement or figures and do not omit any material fact which may make the statements or figures contained therein misleading.

(b) The financial results submitted to the stock exchange shall be signed by the chairperson or managing director, or a whole time director or in the absence of all of them; it shall be signed by any other director of the listed entity who is duly authorized by the board of directors to sign the financial results.

(c) The limited review report shall be placed before the board of directors, at its meeting which approves the financial results, before being submitted to the stock exchange(s).

(d) The annual audited financial results shall be approved by the board of directors of the listed entity and shall be signed in the manner specified in clause (b) of sub-regulation (2).

(3) The listed entity shall submit the financial results in the following manner:

(a) The listed entity shall submit quarterly and year-to-date standalone financial results to the stock exchange within forty-five days of end of each quarter, other than the last quarter.

(b) In case the listed entity has subsidiaries, in addition to the requirement at clause (a) of sub-regulation (3), the listed entity may also submit quarterly/year-to-date consolidated financial results subject to following:

(i) the listed entity shall intimate to the stock exchange, whether or not listed entity opts to additionally submit quarterly/year-to-date consolidated financial results in the first quarter of the financial year and this option shall not be changed during the financial year.

Provided that this option shall also be applicable to listed entity that is required to prepare consolidated financial results for the first time at the end of a financial year in respect of the quarter during the financial year in which the listed entity first acquires the subsidiary.

(ii) in case the listed entity changes its option in any subsequent year, it shall furnish comparable figures for the previous year in accordance with the option exercised for the current financial year.

(c) The quarterly and year-to-date financial results may be either audited or unaudited subject to the following:

(i) In case the listed entity opts to submit unaudited financial results, they shall be subject to limited review by the statutory auditors of the listed entity and shall be accompanied by the limited review report.

Provided that in case of public sector undertakings this limited review may be undertaken by any practicing Chartered Accountant.

(ii) In case the listed entity opts to submit audited financial results, they shall be accompanied by the audit report.

(d) The listed entity shall submit audited standalone financial results for the financial year, within sixty days from the end of the financial year along with the audit report and either Form A (for audit report with unmodified opinion) or Form B (for audit report with modified opinion): Provided that if the listed entity has subsidiaries,

it shall, while submitting annual audited standalone financial results also submit annual audited consolidated financial results along with the audit report and either Form A (for audit report with unmodified opinion) or Form B (for audit report with modified opinion).

- (e) The listed entity shall also submit the audited financial results in respect of the last quarter along-with the results for the entire financial year, with a note stating that the figures of last quarter are the balancing figures between audited figures in respect of the full financial year and the published year-to-date figures upto the third quarter of the current financial year.
- (f) The listed entity shall also submit as part of its standalone or consolidated financial results for the half year, by way of a note, a statement of assets and liabilities as at the end of the half-year.

(4) The applicable formats of the financial results and Form A (for audit report with unmodified opinion) & Form B (for audit report with modified opinion) shall be in the manner as specified by the Board from time to time.

(5) For the purpose of this regulation, any reference to “quarterly/quarter” in case of listed entity which has listed their specified securities on SME Exchange shall be respectively read as “half yearly/half year” and the requirement of submitting ‘year-to-date’ financial results shall not be applicable for a listed entity which has listed their specified securities on SME Exchange.

(6) The Form B and the accompanying annual audit report submitted in terms of clause (d) of sub-regulation (3) shall be reviewed by the stock exchange(s) and Qualified Audit Report Review Committee in manner as specified in Schedule VIII.

(7) The listed entity shall on the direction issued by the Board, carry out the necessary steps, for rectification of modified opinion and/or submission of revised pro-forma financial results, in the manner specified in Schedule VIII.

#### **Annual Report.**

**34.** (1) The listed entity shall submit the annual report to the stock exchange within twenty one working days of it being approved and adopted in the annual general meeting as per the provisions of the Companies Act, 2013.

(2) The annual report shall contain the following:

- (a) audited financial statements i.e. balance sheets, profit and loss accounts etc;
- (b) consolidated financial statements audited by its statutory auditors;
- (c) cash flow statement presented only under the indirect method as prescribed in Accounting Standard-3 or Indian Accounting Standard 7, as applicable, specified in Section 133 of the Companies Act, 2013 read with relevant rules framed thereunder or as specified by the Institute of Chartered Accountants of India, whichever is applicable;
- (d) directors report;
- (e) management discussion and analysis report - either as a part of directors report or addition thereto;
- (f) for the top hundred listed entities based on market capitalization (calculated as on March 31 of every financial year), business responsibility report describing the initiatives taken by them from an environmental, social and governance perspective, in the format as specified by the Board from time to time:

Provided that listed entities other than top 100 listed companies based on market capitalization and listed entities which have listed their specified securities on SME Exchange, may include these business responsibility reports on a voluntary basis in the format as specified.

(3) The annual report shall contain any other disclosures specified in Companies Act, 2013 along with other requirements as specified in Schedule V of these regulations.

**Annual Information Memorandum.**

**35.** The listed entity shall submit to the stock exchange(s) an Annual Information Memorandum in the manner specified by the Board from time to time.

**Documents & Information to shareholders.**

**36.** (1) The listed entity shall send the annual report in the following manner to the shareholders:

- (a) Soft copies of full annual report to all those shareholder(s) who have registered their email address(es) for the purpose;
- (b) Hard copy of statement containing the salient features of all the documents, as prescribed in Section 136 of Companies Act, 2013 or rules made thereunder to those shareholder(s) who have not so registered;
- (c) Hard copies of full annual reports to those shareholders, who request for the same.

(2) The listed entity shall send annual report referred to in sub-regulation (1), to the holders of securities, not less than twenty-one days before the annual general meeting.

(3) In case of the appointment of a new director or re-appointment of a director the shareholders must be provided with the following information:

- (a) a brief resume of the director;
- (b) nature of his expertise in specific functional areas;
- (c) disclosure of relationships between directors inter-se;
- (d) names of listed entities in which the person also holds the directorship and the membership of Committees of the board; and
- (e) shareholding of non-executive directors.

**Draft Scheme of Arrangement & Scheme of Arrangement.**

**37.** (1) Without prejudice to provisions of regulation 11, the listed entity desirous of undertaking a scheme of arrangement or involved in a scheme of arrangement, shall file the draft scheme of arrangement, proposed to be filed before any Court or Tribunal under sections 391-394 and 101 of the Companies Act, 1956 or under Sections 230-234 and Section 66 of Companies Act, 2013, whichever applicable, with the stock exchange(s) for obtaining Observation Letter or No-objection letter, before filing such scheme with any Court or Tribunal, in terms of requirements specified by the Board or stock exchange(s) from time to time.

(2) The listed entity shall not file any scheme of arrangement under sections 391-394 and 101 of the Companies Act, 1956 or under Sections 230-234 and Section 66 of Companies Act, 2013, whichever applicable, with any Court or Tribunal unless it has obtained observation letter or No-objection letter from the stock exchange(s).

(3) The listed entity shall place the Observation letter or No-objection letter of the stock exchange(s) before the Court or Tribunal at the time of seeking approval of the scheme of arrangement: Provided that the validity of the 'Observation Letter' or No-objection letter of stock exchanges shall be six months from the date of issuance, within which the draft scheme of arrangement shall be submitted to the Court or Tribunal .

(4) The listed entity shall ensure compliance with the other requirements as may be prescribed by the Board from time to time.



(5) Upon sanction of the Scheme by the Court or Tribunal, the listed entity shall submit the documents, to the stock exchange(s), as prescribed by the Board and/or stock exchange(s) from time to time.

**Minimum Public Shareholding.**

**38.** The listed entity shall comply with the minimum public shareholding requirements specified in Rule 19(2) and Rule 19A of the Securities Contracts (Regulation) Rules, 1957 in the manner as specified by the Board from time to time:

Provided that provisions of this regulation shall not apply to entities listed on institutional trading platform without making a public issue.

**Issuance of Certificates or Receipts/Letters/Advices for securities and dealing with unclaimed securities.**

**39.** (1) The listed entity shall comply with Rule 19(3) of Securities Contract (Regulations) Rules, 1957 in respect of Letter/Advices of Allotment, Acceptance or Rights, transfers, subdivision, consolidation, renewal, exchanges, issuance of duplicates thereof or any other purpose.

(2) The listed entity shall issue certificates or receipts or advices, as applicable, of subdivision, split, consolidation, renewal, exchanges, endorsements, issuance of duplicates thereof or issuance of new certificates or receipts or advices, as applicable, in cases of loss or old decrepit or worn out certificates or receipts or advices, as applicable within a period of thirty days from the date of such lodgement.

(3) The listed entity shall submit information regarding loss of share certificates and issue of the duplicate certificates, to the stock exchange within two days of its getting information.

(4) The listed entity shall comply with the procedural requirements specified in Schedule VI while dealing with securities issued pursuant to the public issue or any other issue, physical or otherwise, which remain unclaimed and/or are lying in the escrow account, as applicable.

**Transfer or transmission or transposition of securities.**

**40.** (1) Save as otherwise specified in provisions of securities laws or Companies Act, 2013 and rules made thereunder, the listed entity shall also comply with the requirements as specified in this regulation for effecting transfer of securities.

(2) The board of directors of a listed entity may delegate the power of transfer of securities to a committee or to compliance officer or to the registrar to an issue and/or share transfer agent(s): Provided that the board of directors and/or the delegated authority shall attend to the formalities pertaining to transfer of securities at least once in a fortnight: Provided further that the delegated authority shall report on transfer of securities to the board of directors in each meeting.

(3) On receipt of proper documentation, the listed entity shall register transfers of its securities in the name of the transferee(s) and issue certificates or receipts or advices, as applicable, of transfers; or issue any valid objection or intimation to the transferee or transferor, as the case may be, within a period of fifteen days from the date of such receipt of request for transfer:

Provided that the listed entity shall ensure that transmission requests are processed for securities held in dematerialized mode and physical mode within seven days and twenty one days respectively, after receipt of the specified documents: Provided further that proper verifiable dated records of all correspondence with the investor shall be maintained by the listed entity.

(4) The listed entity shall not register transfer when any statutory prohibition or any attachment or prohibitory order of a competent authority restrains it from transferring the securities from the name of the transferor(s).

(5) The listed entity shall not register the transfer of its securities in the name of the transferee(s) when the transferor(s) objects to the transfer: Provided that the transferor serves on the listed entity, within sixty working days of raising the objection, a prohibitory order of a Court of competent jurisdiction.

(6) The listed entity shall not decline to, register or acknowledge any transfer of shares, on the ground of the transferor(s) being either alone or jointly with any other person or persons indebted to the listed entity on any account whatsoever.

(7) The listed entity shall comply with all procedural requirements as specified in Schedule VII with respect to transfer of securities.

(8) In case the listed entity has not effected transfer of securities within fifteen days or where the listed entity has failed to communicate to the transferee(s) any valid objection to the transfer, within the stipulated time period of fifteen days, the listed entity shall compensate the aggrieved party for the opportunity losses caused during the period of the delay: Provided that during the intervening period on account of delay in transfer above, the listed entity shall provide all benefits, which have accrued, to the holder of securities in terms of provisions of Section 126 of Companies Act, 2013, and Section 27 of the Securities Contracts (Regulation) Act, 1956:

Provided further that in case of any claim, difference or dispute under this sub-regulation the same shall be referred to and decided by arbitration as provided in the bye-laws and/or regulations of the stock exchange(s).

(9) The listed entity shall ensure that the share transfer agent and/or the in-house share transfer facility, as the case may be, produces a certificate from a practicing company secretary within one month of the end of each half of the financial year, certifying that all certificates have been issued within thirty days of the date of lodgement for transfer, sub-division, consolidation, renewal, exchange or endorsement of calls/allotment monies.

(10) The listed entity shall ensure that certificate mentioned at sub-regulation (9), shall be filed with the stock exchange(s) simultaneously.

(11) In addition to transfer of securities, the provisions of this regulation shall also apply to the following :

- (a) deletion of name of the deceased holder(s) of securities, where the securities are held in the name of two or more holders of securities ;
- (b) transmission of securities to the legal heir(s), where deceased holder of securities was the sole holder of securities;
- (c) transposition of securities, when there is a change in the order of names in which physical securities are held jointly in the names of two or more holders of securities.

**Other provisions relating to securities.**

**41.** (1) The listed entity shall not exercise a lien on its fully paid shares and that in respect of partly paid shares it shall not exercise any lien except in respect of moneys called or payable at a fixed time in respect of such shares.

(2) The listed entity shall, in case of any amount to be paid in advance of calls on any shares stipulate that such amount may carry interest but shall not in respect thereof confer a right to dividend or to participate in profits.

(3) The listed entity shall not issue shares in any manner which may confer on any person, superior rights as to voting or dividend vis-à-vis the rights on equity shares that are already listed.

(4) The listed entity shall, issue or offer in the first instance all shares (including forfeited shares), securities, rights, privileges and benefits to subscribe pro rata basis , to the equity shareholders of the listed entity, unless the shareholders in the general meeting decide otherwise.

(5) Unless the terms of issue otherwise provide, the listed entity shall not select any of its listed securities for redemption otherwise than on pro-rata basis or by lot.

**Record Date or Date of closure of transfer books.**

**42.** (1) The listed entity shall intimate the record date to all the stock exchange(s) where it is listed for the following purposes:

- (a) declaration of dividend;
- (b) issue of right or bonus shares;
- (c) issue of shares for conversion of debentures or any other convertible security;
- (d) shares arising out of rights attached to debentures or any other convertible security
- (e) corporate actions like mergers, de-mergers, splits and bonus shares, where stock derivatives are available on the stock of listed entity or where listed entity's stocks form part of an index on which derivatives are available;
- (f) such other purposes as may be specified by the stock exchange(s).

(2) The listed entity shall give notice in advance of at least seven working days (excluding the date of intimation and the record date) to stock exchange(s) of record date specifying the purpose of the record date.

(3) The listed entity shall recommend or declare all dividend and/or cash bonuses at least five working days (excluding the date of intimation and the record date) before the record date fixed for the purpose.

(4) The listed entity shall ensure the time gap of at least thirty days between two record dates.

(5) For securities held in physical form, the listed entity may, announce dates of closure of its transfer books in place of record date for complying with requirements as specified in sub-regulations (1) to (4):

Provided that the listed entity shall ensure that there is a time gap of at least thirty days between two dates of closure of its transfer books.

**Dividends.**

**43.** (1) The listed entity shall declare and disclose the dividend on per share basis only.

(2) The listed entity shall not forfeit unclaimed dividends before the claim becomes barred by law and such forfeiture, if effected, shall be annulled in appropriate cases.

**Voting by shareholders.**

**44.** (1) The listed entity shall provide the facility of remote e-voting facility to its shareholders, in respect to all shareholders' resolutions.

(2) The e-voting facility to be provided to shareholders in terms of sub-regulation (1), shall be provided in compliance with the conditions specified under the Companies (Management and Administration) Rules, 2014, or amendments made thereto.

(3) The listed entity shall submit to the stock exchange, within forty eight hours of conclusion of its General Meeting, details regarding the voting results in the format specified by the Board.

(4) The listed entity shall send proxy forms to holders of securities in all cases mentioning that a holder may vote either for or against each resolution.

**Change in name of the listed entity.**

**45.** (1) The listed entity shall be allowed to change its name subject to compliance with the following conditions:

- (a) a time period of at least one year has elapsed from the last name change;
- (b) at least fifty percent. of the total revenue in the preceding one year period has been accounted for by the new activity suggested by the new name; or
- (c) the amount invested in the new activity/project is atleast fifty percent. of the assets of the listed entity:

Provided that if any listed entity has changed its activities which are not reflected in its name, it shall change its name in line with its activities within a period of six months from the change of activities in compliance of provisions as applicable to change of name prescribed under Companies Act, 2013.

*Explanation.*- For the purpose of this regulation, –

- (i) 'assets' of the listed entity means the sum of fixed assets, advances, works in Progress / Inventories, investments, trade receivables, cash & cash equivalents;
- (ii) 'advances' shall include only those amounts extended to contractors and suppliers towards execution of project, specific to new activity as reflected in the new name .

(2) On satisfaction of conditions at sub-regulation (1), the listed entity shall file an application for name availability with Registrar of Companies.

(3) On receipt of confirmation regarding name availability from Registrar of Companies, before filing the request for change of name with the Registrar of CompaniesintermsofprovisionslaiddowninCompaniesAct,2013andrulsmade thereunder, the listed entity shall seek approval from Stock Exchange by submitting a certificate from chartered accountant stating compliance with conditions at sub-regulation(1).

**Website.**

**46.** (1) The listed entity shall maintain a functional website containing the basic information about the listed entity.

(2) The listed entity shall disseminate the following information on its website:

- (a) details of its business;
- (b) terms and conditions of appointment of independent directors;
- (c) composition of various committees of board of directors;
- (d) code of conduct of board of directors and senior management personnel;
- (e) details of establishment of vigil mechanism/ Whistle Blower policy;
- (f) criteria of making payments to non-executive directors , if the same has not been disclosed in annual report;
- (g) policy on dealing with related party transactions;
- (h) policy for determining 'material' subsidiaries;
- (i) details of familiarization programmes imparted to independent directors including the following details:-
  - (i) number of programmes attended by independent directors (during the year and on a cumulative basis till date),
  - (ii) number of hours spent by independent directors in such programmes (during the year and on cumulative

basis till date), and

(iii) other relevant details

(j) the email address for grievance redressal and other relevant details;

(k) contact information of the designated officials of the listed entity who are responsible for assisting and handling investor grievances;

(l) financial information including:

(i) notice of meeting of the board of directors where financial results shall be discussed;

(ii) financial results, on conclusion of the meeting of the board of directors where the financial results were approved;

(iii) complete copy of the annual report including balance sheet, profit and loss account, directors report, corporate governance report etc;

(m) shareholding pattern;

(n) details of agreements entered into with the media companies and/or their associates, etc; (o) schedule of analyst or institutional investor meet and presentations made by the listed entity to analysts or institutional investors simultaneously with submission to stock exchange;

(p) new name and the old name of the listed entity for a continuous period of one year, from the date of the last name change;

(q) items in sub-regulation (1) of regulation 47 .

(3) (a) The listed entity shall ensure that the contents of the website are correct.

(b) The listed entity shall update any change in the content of its website within two working days from the date of such change in content.

#### **Advertisements in Newspapers.**

**47. (1)** The listed entity shall publish the following information in the newspaper:

(a) notice of meeting of the board of directors where financial results shall be discussed

(b) financial results, as specified in regulation 33, along-with the modified opinion(s) or reservation(s), if any, expressed by the auditor: Provided that if the listed entity has submitted both standalone and consolidated financial results, the listed entity shall publish consolidated financial results along-with

(1) Turnover,

(2) Profit before tax and

(3) Profit after tax, on a stand-alone basis, as a foot note; and a reference to the places, such as the website of listed entity and stock exchange(s), where the standalone results of the listed entity are available. (c) statements of deviation(s) or variation(s) as specified in sub-regulation (1) of regulation 32 on quarterly basis, after review by audit committee and its explanation in directors report in annual report; (d) notices given to shareholders by advertisement.

(2) The listed entity shall give a reference in the newspaper publication, in sub-regulation (1), to link of the website of listed entity and stock exchange(s), where further details are available.

(3) The listed entity shall publish the information specified in sub-regulation (1) in the newspaper simultaneously with the submission of the same to the stock exchange(s). Provided that financial results at clause (b) of sub-regulation (1), shall be published within 48 hours of conclusion of the meeting of board of directors at which the financial results were approved.

(4) The information at sub-regulation (1) shall be published in at least one English language national daily newspaper circulating in the whole or substantially the whole of India and in one daily newspaper published in the language of the region, where the registered office of the listed entity is situated:

Provided that the requirements of this regulation shall not be applicable in case of listed entities which have listed their specified securities on SME Exchange.

### **Accounting Standards.**

48. The listed entity shall comply with all the applicable and notified Accounting Standards from time to time

## **CHAPTER V**

### **OBLIGATIONS OF LISTED ENTITY WHICH HAS LISTED ITS NON-CONVERTIBLE DEBT SECURITIES OR NON-CONVERTIBLE REDEEMABLE PREFERENCE SHARES OR BOTH**

#### **Applicability.**

49. (1) The provisions of this chapter shall apply only to a listed entity which has listed its 'Non-convertible Debt Securities' and/or 'Non-Convertible Redeemable Preference Shares' on a recognised stock exchange in accordance with Securities and Exchange Board of India (Issue and Listing of Debt Securities) Regulations, 2008 or Securities and Exchange Board of India (Issue and Listing of Non-Convertible Redeemable Preference Shares) Regulations, 2013 respectively.

(2) The provisions of this chapter shall also be applicable to "perpetual debt instrument" and "perpetual non-cumulative preference share" listed by banks.

*Explanation (1).* - For the purpose of this chapter, "Bank" means any bank included in the Second Schedule to the Reserve Bank of India Act, 1934.

*Explanation (2).* - For the purpose of this chapter, if the listed entity has listed its non-convertible redeemable preference shares:

- (i) The reference to "interest" may also read as dividend;
- (ii) The provisions concerning debenture trustees and security creation (or asset cover or charge on assets) shall not be applicable for "non-convertible redeemable preference shares"

#### **Intimation to stock exchange(s).**

50. (1) The listed entity shall give prior intimation to the stock exchange(s) at least eleven working days before the date on and from which the interest on debentures and bonds, and redemption amount of redeemable shares or of debentures and bonds shall be payable.

(2) The listed entity shall intimate the stock exchange(s), its intention to raise funds through new non-convertible debt securities or non-convertible redeemable preference shares it proposes to list either through a public issue or on private placement basis, prior to issuance of such securities: Provided that the above intimation may be given prior to the meeting of board of directors wherein the proposal to raise funds through new non convertible debt securities or non-convertible redeemable preference shares shall be considered.

(3) The listed entity shall intimate to the stock exchange(s), at least two working days in advance, excluding the date of the intimation and date of the meeting, regarding the meeting of its board of directors, at which the recommendation or declaration of issue of non convertible debt securities or any other matter affecting the rights or interests of holders of non convertible debt securities or non convertible redeemable preference shares is proposed to be considered.

**Disclosure of information having bearing on performance/operation of listed entity and/or price sensitive information.**

**51.** (1) The listed entity shall promptly inform the stock exchange(s) of all information having bearing on the performance/operation of the listed entity, price sensitive information or any action that shall affect payment of interest or dividend of non-convertible preference shares or redemption of non convertible debt securities or redeemable preference shares. Explanation.- The expression 'promptly inform', shall imply that the stock exchange must be informed as soon as practically possible and without any delay and that the information shall be given first to the stock exchange(s) before providing the same to any third party.

(2) Without prejudice to the generality of sub-regulation(1), the listed entity who has issued or is issuing non convertible debt securities and/or non-convertible redeemable preference shares shall make disclosures as specified in Part B of Schedule III.

**Financial Results.**

**52.** (1) The listed entity shall prepare and submit un-audited or audited financial results on a half yearly basis in the format as specified by the Board within forty five days from the end of the half year to the recognised stock exchange(s).

(2) The listed entity shall comply with following requirements with respect to preparation, approval, authentication and publication of annual and half-yearly financial results:

- (a) Un-audited financial results shall be accompanied by limited review report prepared by the statutory auditors of the listed entity or in case of public sector undertakings, by any practising Chartered Accountant, in the format as specified by the Board: Provided that if the listed entity intimates in advance to the stock exchange(s) that it shall submit to the stock exchange(s) its annual audited results within sixty days from the end of the financial year, un-audited financial results for the last half year accompanied by limited review report by the auditors need not be submitted to stock exchange(s).
- (b) Half-yearly results shall be taken on record by the board of directors and signed by the managing director / executive director.
- (c) The audited results for the year shall be submitted to the recognised stock exchange(s) in the same format as is applicable for half-yearly financial results.
- (d) If the listed entity opts to submit un-audited financial results for the last half year accompanied by limited review report by the auditors, it shall also submit audited financial results for the entire financial year, as soon as they are approved by the board of directors.
- (e) Modified opinion(s) in audit reports that have a bearing on the interest payment/ dividend payment pertaining to non-convertible redeemable debentures/ redemption or principal repayment capacity of the listed entity shall be appropriately and adequately addressed by the board of directors while publishing the accounts for the said period.

(3) (a) The annual audited financial results shall be submitted along with the annual audit report and either Form A for audit report with unmodified opinion, or Form B for audit report with modified opinion.

(b) The Form B and the accompanying annual audit report submitted in terms of clause (a) shall be reviewed by the stock exchange(s) and the Qualified Audit Report Review Committee in the manner specified in Schedule VIII.

(c) The listed entity shall on the direction issued by the Board, carry out the necessary steps, for rectification of modified opinion and/or submission of revised pro-forma financial results, in the manner specified in Schedule VIII.

(d) The applicable formats of Form A and Form B shall be specified by the Board from time to time.

(4) The listed entity, while submitting half yearly / annual financial results, shall disclose the following line items along with the financial results:

- (a) credit rating and change in credit rating (if any);
- (b) asset cover available, in case of non convertible debt securities;
- (c) debt-equity ratio;
- (d) previous due date for the payment of interest/ dividend for non-convertible redeemable preference shares/ repayment of principal of non-convertible preference shares /non convertible debt securities and whether the same has been paid or not; and,
- (e) next due date for the payment of interest/ dividend of non-convertible preference shares /principal along with the amount of interest/ dividend of non-convertible preference shares payable and the redemption amount;
- (f) debt service coverage ratio;
- (g) interest service coverage ratio;
- (h) outstanding redeemable preference shares (quantity and value);
- (i) capital redemption reserve/debenture redemption reserve;
- (j) net worth;
- (k) net profit after tax;
- (l) earnings per share:

Provided that the requirement of disclosures of debt service coverage ratio, asset cover and interest service coverage ratio shall not be applicable for banks or non banking financial companies registered with the Reserve Bank of India. Provided further that the requirement of this sub- regulation shall not be applicable in case of unsecured debt instruments issued by regulated financial sector entities eligible for meeting capital requirements as specified by respective regulators.

(5) While submitting the information required under sub- regulation (4), the listed entity shall submit to stock exchange(s), a certificate signed by debenture trustee that it has taken note of the contents.

(6) The listed entity which has listed its non convertible redeemable preference shares shall make the following additional disclosures as notes to financials:

- (a) profit for the half year and cumulative profit for the year;
- (b) free reserve as on the end of half year;
- (c) securities premium account balance (if redemption of redeemable preference share is to be done at a premium, such premium may be appropriated from securities premium account): Provided that disclosure on securities premium account balance may be provided only in the year in which non convertible redeemable preference shares are due for redemption;



- (d) track record of dividend payment on non convertible redeemable preference shares: Provided that in case the dividend has been deferred at any time, then the actual date of payment shall be disclosed;
- (e) breach of any covenants under the terms of the non convertible redeemable preference shares: Provided that in case a listed entity is planning a fresh issuance of shares whose end use is servicing of the non convertible redeemable preference shares (whether dividend or principle redemption), then the same shall be disclosed whenever the listed entity decided on such issuances.

(7) The listed entity shall submit to the stock exchange on a half yearly basis along with the half yearly financial results, a statement indicating material deviations, if any, in the use of proceeds of issue of non convertible debt securities and non-convertible redeemable preference shares from the objects stated in the offer document.

(8) The listed entity shall, within two calendar days of the conclusion of the meeting of the board of directors, publish the financial results and statement referred to in sub-regulation (4), in at least one English national daily newspaper circulating in the whole or substantially the whole of India.

### **Annual Report.**

**53.** The annual report of the listed entity shall contain disclosures as specified in Companies Act, 2013 along with the following:

- (a) audited financial statements i.e. balance sheets, profit and loss accounts etc;
- (b) cash flow statement presented only under the indirect method as prescribed in Accounting Standard-3/ Indian Accounting Standard 7, mandated under Section 133 of the Companies Act, 2013 read with relevant rules framed thereunder or by the Institute of Chartered Accountants of India, whichever is applicable;
- (c) auditors report;
- (d) directors report;
- (e) name of the debenture trustees with full contact details ;
- (f) related party disclosures as specified in Para A of Schedule V.

### **Asset Cover.**

**54.** (1) In respect of its listed non-convertible debt securities, the listed entity shall maintain hundred per cent. asset cover sufficient to discharge the principal amount at all times for the non-convertible debt securities issued.

(2) The listed entity shall disclose to the stock exchange in quarterly, half-yearly, year-to-date and annual financial statements, as applicable, the extent and nature of security created and maintained with respect to its secured listed non-convertible debt securities.

(3) The requirement specified in sub-regulation (1), shall not be applicable in case of unsecured debt securities issued by regulated financial sector entities eligible for meeting capital requirements as specified by respective regulators.

### **Credit Rating.**

**55.** Each rating obtained by the listed entity with respect to non-convertible debt securities shall be reviewed at least once a year by a credit rating agency registered by the Board.

### **Documents and Intimation to Debenture Trustees.**

**56.** (1) The listed entity shall forward the following to the debenture trustee promptly:

- (a) a copy of the annual report at the same time as it is issued along with a copy of certificate from the listed entity's auditors in respect of utilisation of funds during the implementation period of the project for which the funds have been raised:

Provided that in the case of debentures or preference shares issued for financing working capital or general corporate purposes or for capital raising purposes the copy of the auditor's certificate may be submitted at the end of each financial year till the funds have been fully utilised or the purpose for which these funds were intended has been achieved.

- (b) a copy of all notices, resolutions and circulars relating to-
- (i) new issue of non convertible debt securities at the same time as they are sent to shareholders/ holders of non convertible debt securities;
  - (ii) the meetings of holders of non-convertible debt securities at the same time as they are sent to the holders of non convertible debt securities or advertised in the media including those relating to proceedings of the meetings;
- (c) intimations regarding :
- (i) any revision in the rating;
  - (ii) any default in timely payment of interest or redemption or both in respect of the non convertible debt securities;
  - (iii) failure to create charge on the assets;
- (d) a half-yearly certificate regarding maintenance of hundred percent. asset cover in respect of listed non convertible debt securities, by either a practicing company secretary or a practicing chartered accountant, along with the half yearly financial results: Provided that submission of such half yearly certificates is not applicable in cases where a listed entity is a bank or non banking financial companies registered with Reserve Bank of India or where bonds are secured by a Government guarantee.

(2) The listed entity shall forward to the debenture trustee any such information sought and provide access to relevant books of accounts as required by the debenture trustee.

(3) The listed entity may, subject to the consent of the debenture trustee, send the information stipulated in sub-regulation (1), in electronic form/fax.

**Other submissions to stock exchange(s).**

**57.** (1) The listed entity shall submit a certificate to the stock exchange within two days of the interest or principal or both becoming due that it has made timely payment of interests or principal obligations or both in respect of the non convertible debt securities.

(2) The listed entity shall provide an undertaking to the stock exchange(s) on annual basis stating that all documents and intimations required to be submitted to Debenture Trustees in terms of Trust Deed and Securities and Exchange Board of India (Issue and Listing of Debt Securities) Regulations, 2008 have been complied with.

(3) The listed entity shall forward to the stock exchange any other information in the manner and format as specified by the Board from time to time.

**Documents and information to holders of non - convertible debt securities and non-convertible preference shares**

**58.** (1) The listed entity shall send the following documents:

- (a) Soft copies of full annual reports to all the holders of non convertible preference share who have registered their email address(es) for the purpose;
- (b) Hard copy of statement containing the salient features of all the documents, as specified in Section 136 of Companies Act, 2013 and rules made thereunder to those holders of non convertible preference share who have not so registered;
- (c) Hard copies of full annual reports to those holders of non convertible debt securities and non convertible preference share, who request for the same.
- (d) Half yearly communication as specified in sub-regulation (4) and (5) of regulation 52, to holders of non convertible debt securities and non convertible preference shares;

(2) The listed entity shall send the notice of all meetings of holders of non convertible debt securities and holders of non-convertible redeemable preference shares specifically stating that the provisions for appointment of proxy as mentioned in Section 105 of the Companies Act, 2013, shall be applicable for such meeting.

(3) The listed entity shall send proxy forms to holders of non convertible debt securities and non-convertible redeemable preference shares which shall be worded in such a manner that holders of these securities may vote either for or against each resolution.

**Structure of non convertible debt securities and non convertible redeemable preference shares.**

**59.** (1) The listed entity shall not make material modification without prior approval of the stock exchange(s) where the non convertible debt securities or non-convertible redeemable preference shares, as applicable, are listed, to :

- (a) the structure of the debenture in terms of coupon, conversion, redemption, or otherwise.
- (b) the structure of the non-convertible redeemable preference shares in terms of dividend of non-convertible preference shares payable, conversion, redemption, or otherwise.

(2) The approval of the stock exchange referred to in sub-regulation (1) shall be made only after:

- (a) approval of the board of directors and the debenture trustee in case of non-convertible debt securities and
- (b) after complying with the provisions of Companies Act, 2013 including approval of the consent of requisite majority of holders of that class of securities.

**Record Date**

**60.** (1) The listed entity shall fix a record date for purposes of payment of interest, dividend and payment of redemption or repayment amount or for such other purposes as specified by the stock exchange.

(2) The listed entity shall give notice in advance of at least seven working days (excluding the date of intimation and the record date) to the recognised stock exchange(s) of the record date or of as many days as the stock exchange(s) may agree to or require specifying the purpose of the record date.

**Terms of non convertible debt securities and non convertible redeemable preference shares.**

**61.** (1) The listed entity shall ensure timely payment of interest or dividend of non-convertible redeemable preference shares or redemption payment: Provided that the listed entity shall not declare or distribute any dividend wherein it has defaulted in payment of interest on debt securities or redemption thereof or in creation of security as per the terms of the issue of debt securities:

Provided further that this requirement shall not be applicable in case of unsecured debt securities issued by regulated financial sector entities eligible for meeting capital requirements as specified by respective regulators.

(2) The listed entity shall not forfeit unclaimed interest/dividend and such unclaimed interest/dividend shall be transferred to the 'Investor Education and Protection Fund' set up as per Section 125 of the Companies Act, 2013.

(3) Unless the terms of issue provide otherwise, the listed entity shall not select any of its listed securities for redemption otherwise than pro rata basis or by lot.

(4) The listed entity shall comply with requirements as specified in regulation 40 for transfer of securities including procedural requirements specified in Schedule VII.

**Website.**

**62.** (1) The listed entity shall maintain a functional website containing the following information about the listed entity:-

- (a) details of its business;
- (b) financial information including complete copy of the annual report including balance sheet, profit and loss account, directors report etc;
- (c) contact information of the designated officials of the listed entity who are responsible for assisting and handling investor grievances;
- (d) email address for grievance redressal and other relevant details;
- (e) name of the debenture trustees with full contact details;
- (f) the information, report, notices, call letters, circulars, proceedings, etc concerning non-convertible redeemable preference shares or non convertible debt securities;
- (g) all information and reports including compliance reports filed by the listed entity;
- (h) information with respect to the following events:
  - (i) default by issuer to pay interest on or redemption amount;
  - (ii) failure to create a charge on the assets;
  - (iii) revision of rating assigned to the non convertible debt securities:

(2) The listed entity may also issue a press release with respect to the events specified in sub-regulation (1).

(3) The listed entity shall ensure that the contents of the website are correct and updated at any given point of time.

**CHAPTER VI**

**OBLIGATIONS OF LISTED ENTITY WHICH HAS LISTED ITS SPECIFIED SECURITIES AND EITHER NON-  
CONVERTIBLE DEBT SECURITIES OR NON-CONVERTIBLE REDEEMABLE PREFERENCE SHARES OR  
BOTH**

**Applicability of Chapters IV and V.**

**63.** (1) Entity which has listed its 'specified securities' and 'non-convertible debt securities' or 'non-convertible redeemable preference shares' or both on any recognised stock exchange, shall be bound by the provisions in Chapter IV of these regulations.

(2) The listed entity described in sub-regulation (1) shall additionally comply with the following regulations in Chapter V: (a) regulation 50(2),(3); (b) regulation 51; (c) regulation 52(3), (4), (5) and (6); (d) regulation 53 (e) regulation 54 (f) regulation 55 (g) regulation 56 (h) regulation 57 (i) regulation 58 (j) regulation 59 (k) regulation 60 (l)

regulation 61:

Provided that the listed entity which has submitted any information to the stock exchange in compliance with the disclosure requirements under Chapter IV of these regulations, need not re-submit any such information under the provisions of this regulations without prejudice to any power conferred on the Board or the stock exchange or any other authority under any law to seek any such information from the listed entity: Provided further that the listed entity, which has satisfied certain obligations in compliance with other chapters, shall not separately satisfy the same conditions under this chapter.

**Delisting.**

**64.** (1) In the event specified securities of the listed entity are delisted from the stock exchange, the listed entity shall comply with all the provisions in Chapter V of these regulations.

(2) In the event that non-convertible debt securities and non-convertible redeemable preference shares' of the listed entity do not remain listed on the stock exchange, the listed entity shall comply with all the provisions in Chapter IV of these regulations.

**CHAPTER VIII**

**OBLIGATIONS OF LISTED ENTITY WHICH HAS LISTED ITS SECURITISED DEBT INSTRUMENTS**

**Applicability.**

**81.** (1) The provisions of this chapter shall apply to Special Purpose Distinct Entity issuing securitised debt instruments and trustees of Special Purpose Distinct Entity shall ensure compliance with each of the provisions of these regulations.

(2) The expressions "asset pool", "clean up call option", "credit enhancement", "debt or receivables", "investor", "liquidity provider", "obligor", "originator", "regulated activity", "scheme", "securitization", "securitized debt instrument", "servicer", "special purpose distinct entity", "sponsor" and "trustee" shall have the same meaning as assigned to them under Securities and Exchange Board of India (Public Offer and Listing of Securitised Debt Instruments) Regulations, 2008;

**Intimation and filings with stock exchange(s).**

**82.** (1) The listed entity shall intimate the Stock exchange, of its intention to issue new securitized debt instruments either through a public issue or on private placement basis (if it proposes to list such privately placed debt securities on the Stock exchange) prior to issuing such securities.

(2) The listed entity shall intimate to the stock exchange(s), at least two working days in advance, excluding the date of the intimation and date of the meeting, regarding the meeting of its board of trustees, at which the recommendation or declaration of issue of securitized debt instruments or any other matter affecting the rights or interests of holders of securitized debt instruments is proposed to be considered.

(3) The listed entity shall submit such statements, reports or information including financial information pertaining to Schemes to stock exchange within seven days from the end of the month/ actual payment date, either by itself or through the servicer, on a monthly basis in the format as specified by the Board from time to time:

Provided that where periodicity of the receivables is not monthly, reporting shall be made for the relevant periods.

(4) The listed entity shall provide the stock exchange, either by itself or through the servicer, loan level information, without disclosing particulars of individual borrowers, in manner specified by stock exchange.

**Disclosure of information having bearing on performance/operation of listed entity and/or price sensitive**

**information.**

**83.** (1) The listed entity shall promptly inform the stock exchange(s) of all information having bearing on the on performance/operation of the listed entity and price sensitive information.

(2) Without prejudice to the generality of sub-regulation(1), the listed entity shall make the disclosures specified in Part D of Schedule III.

*Explanation.-* The expression 'promptly inform', shall imply that the stock exchange must be informed must as soon as practically possible and without any delay and that the information shall be given first to the stock exchange(s) before providing the same to any third party.

**Credit Rating.**

**84.** (1) Every rating obtained by the listed entity with respect to securitised debt instruments shall be periodically reviewed, preferably once a year, by a credit rating agency registered by the Board.

(2) Any revision in rating(s) shall be disseminated by the stock exchange(s).

**Information to Investors.**

**85.** (1) The listed entity shall provide either by itself or through the servicer, loan level information without disclosing particulars of individual borrower to its investors.

(2) The listed entity shall provide information regarding revision in rating as a result of credit rating done periodically in terms of regulation 84 above to its investors.

(3) The information at sub-regulation (1) and (2) may be sent to investors in electronic form/fax if so consented by the investors.

(4) The listed entity shall display the email address of the grievance redressal division and other relevant details prominently on its website and in the various materials / pamphlets/ advertisement campaigns initiated by it for creating investor awareness.

**Terms of Securitized Debt Instruments.**

**86.** (1) The listed entity shall ensure that no material modification shall be made to the structure of the securitized debt instruments in terms of coupon, conversion, redemption, or otherwise without prior approval of the recognised stock exchange(s) where the securitized debt instruments are listed and the listed entity shall make an application to the recognised stock exchange(s) only after the approval by Trustees.

(2) The listed entity shall ensure timely interest/ redemption payment.

(3) The listed entity shall ensure that where credit enhancement has been provided for, it shall make credit enhancement available for listed securitized debt instruments at all times.

(4) The listed entity shall not forfeit unclaimed interest and principal and such unclaimed interest and principal shall be, after a period of seven years, transferred to the Investor Protection and Education Fund established under the Securities and Exchange Board of India (Investor Protection and Education Fund) Regulations, 2009.

(5) Unless the terms of issue provide otherwise, the listed entity shall not select any of its listed securitized debt instruments for redemption otherwise than on pro rata basis or by lot and shall promptly submit to the recognised stock exchange(s) the details thereof.

(6) The listed entity shall remain listed till the maturity or redemption of securitised debt instruments or till the same are delisted as per the procedure laid down by the Board

Provided that the provisions of this sub-regulation shall not restrict the right of the recognised stock exchange(s) to delist, suspend or remove the securities at any time and for any reason which the recognised stock exchange(s) considers proper in accordance with the applicable legal provisions.

**Record Date.**

87. (1) The listed entity shall fix a record date for payment of interest and payment of redemption or repayment amount or for such other purposes as specified by the recognised stock exchange(s).

(2) The listed entity shall give notice in advance of at least seven working days (excluding the date of intimation and the record date) to the recognised stock exchange(s) of the record date or of as many days as the Stock Exchange may agree to or require specifying the purpose of the record date.

**SCHEDULE II: CORPORATE GOVERNANCE**

**PART A: MINIMUM INFORMATION TO BE PLACED BEFORE BOARD OF DIRECTORS**

**[See Regulation 17(7)]**

- A. Annual operating plans and budgets and any updates.
- B. Capital budgets and any updates.
- C. Quarterly results for the listed entity and its operating divisions or business segments.
- D. Minutes of meetings of audit committee and other committees of the board of directors.
- E. The information on recruitment and remuneration of senior officers just below the level of board of directors, including appointment or removal of Chief Financial Officer and the Company Secretary.
- F. Show cause, demand, prosecution notices and penalty notices, which are materially important.
- G. Fatal or serious accidents, dangerous occurrences, any material effluent or pollution problems.
- H. Any material default in financial obligations to and by the listed entity, or substantial non-payment for goods sold by the listed entity.
- I. Any issue, which involves possible public or product liability claims of substantial nature, including any judgement or order which, may have passed strictures on the conduct of the listed entity or taken an adverse view regarding another enterprise that may have negative implications on the listed entity.
- J. Details of any joint venture or collaboration agreement.
- K. Transactions that involve substantial payment towards goodwill, brand equity, or intellectual property.
- L. Significant labour problems and their proposed solutions. Any significant development in Human Resources/ Industrial Relations front like signing of wage agreement, implementation of Voluntary Retirement Scheme etc.
- M. Sale of investments, subsidiaries, assets which are material in nature and not in normal course of business.
- N. Quarterly details of foreign exchange exposures and the steps taken by management to limit the risks of adverse exchange rate movement, if material.
- O. Non-compliance of any regulatory, statutory or listing requirements and shareholders service such as non-payment of dividend, delay in share transfer etc.

**PART B: COMPLIANCE CERTIFICATE**

**[See Regulation 17(8)]**

The following compliance certificate shall be furnished by chief executive officer and chief financial officer:

- A. They have reviewed financial statements and the cash flow statement for the year and that to the best of their knowledge and belief:
  - (1) these statements do not contain any materially untrue statement or omit any material fact or contain statements that might be misleading;
  - (2) these statements together present a true and fair view of the listed entity's affairs and are in compliance with existing accounting standards, applicable laws and regulations.
- B. There are, to the best of their knowledge and belief, no transactions entered into by the listed entity during the year which are fraudulent, illegal or violative of the listed entity's code of conduct.
- C. They accept responsibility for establishing and maintaining internal controls for financial reporting and that they have evaluated the effectiveness of internal control systems of the listed entity pertaining to financial reporting and they have disclosed to the auditors and the audit committee, deficiencies in the design or operation of such internal controls, if any, of which they are aware and the steps they have taken or propose to take to rectify these deficiencies.
- D. They have indicated to the auditors and the Audit committee
  - (1) significant changes in internal control over financial reporting during the year;
  - (2) significant changes in accounting policies during the year and that the same have been disclosed in the notes to the financial statements; and
  - (3) instances of significant fraud of which they have become aware and the involvement therein, if any, of the management or an employee having a significant role in the listed entity's internal control system over financial reporting.

**PART C: ROLE OF THE AUDIT COMMITTEE AND REVIEW OF INFORMATION BY AUDIT COMMITTEE****[See Regulation 18(3)]**

- A. The role of the audit committee shall include the following:
  - (1) oversight of the listed entity's financial reporting process and the disclosure of its financial information to ensure that the financial statement is correct, sufficient and credible;
  - (2) recommendation for appointment, remuneration and terms of appointment of auditors of the listed entity;
  - (3) approval of payment to statutory auditors for any other services rendered by the statutory auditors;
  - (4) reviewing, with the management, the annual financial statements and auditor's report thereon before submission to the board for approval, with particular reference to:
    - (a) matters required to be included in the director's responsibility statement to be included in the board's report in terms of clause (c) of sub-section (3) of Section 134 of the Companies Act, 2013;
    - (b) changes, if any, in accounting policies and practices and reasons for the same;
    - (c) major accounting entries involving estimates based on the exercise of judgment by management;
    - (d) significant adjustments made in the financial statements arising out of audit findings;



- (e) compliance with listing and other legal requirements relating to financial statements;
  - (f) disclosure of any related party transactions;
  - (g) modified opinion(s) in the draft audit report;
- (5) reviewing, with the management, the quarterly financial statements before submission to the board for approval;
  - (6) reviewing, with the management, the statement of uses / application of funds raised through an issue (public issue, rights issue, preferential issue, etc.), the statement of funds utilized for purposes other than those stated in the offer document / prospectus / notice and the report submitted by the monitoring agency monitoring the utilisation of proceeds of a public or rights issue, and making appropriate recommendations to the board to take up steps in this matter;
  - (7) reviewing and monitoring the auditor's independence and performance, and effectiveness of audit process;
  - (8) approval or any subsequent modification of transactions of the listed entity with related parties;
  - (9) scrutiny of inter-corporate loans and investments;
  - (10) valuation of undertakings or assets of the listed entity, wherever it is necessary;
  - (11) evaluation of internal financial controls and risk management systems;
  - (12) reviewing, with the management, performance of statutory and internal auditors, adequacy of the internal control systems;
  - (13) reviewing the adequacy of internal audit function, if any, including the structure of the internal audit department, staffing and seniority of the official heading the department, reporting structure coverage and frequency of internal audit;
  - (14) discussion with internal auditors of any significant findings and follow up there on;
  - (15) reviewing the findings of any internal investigations by the internal auditors into matters where there is suspected fraud or irregularity or a failure of internal control systems of a material nature and reporting the matter to the board;
  - (16) discussion with statutory auditors before the audit commences, about the nature and scope of audit as well as post-audit discussion to ascertain any area of concern;
  - (17) to look into the reasons for substantial defaults in the payment to the depositors, debenture holders, shareholders (in case of non-payment of declared dividends) and creditors;
  - (18) to review the functioning of the whistle blower mechanism;
  - (19) approval of appointment of chief financial officer after assessing the qualifications, experience and background, etc. of the candidate;
  - (20) Carrying out any other function as is mentioned in the terms of reference of the audit committee.
- B. The audit committee shall mandatorily review the following information:
- (1) management discussion and analysis of financial condition and results of operations;
  - (2) statement of significant related party transactions (as defined by the audit committee), submitted by management;

- (3) management letters / letters of internal control weaknesses issued by the statutory auditors;
- (4) internal audit reports relating to internal control weaknesses; and
- (5) the appointment, removal and terms of remuneration of the chief internal auditor shall be subject to review by the audit committee.
- (6) statement of deviations:
  - (a) quarterly statement of deviation(s) including report of monitoring agency, if applicable, submitted to stock exchange(s) in terms of Regulation 32(1).
  - (b) annual statement of funds utilized for purposes other than those stated in the offer document/prospectus/notice in terms of Regulation 32(7).

#### **PART D: ROLE OF COMMITTEES (OTHER THAN AUDIT COMMITTEE)**

**[See Regulation 19(4) and 20(4)]**

- A. **ROLE OF NOMINATION AND REMUNERATION COMMITTEE:** Role of committee shall, inter-alia, include the following:
- (1) formulation of the criteria for determining qualifications, positive attributes and independence of a director and recommend to the board of directors a policy relating to, the remuneration of the directors, key managerial personnel and other employees;
  - (2) formulation of criteria for evaluation of performance of independent directors and the board of directors;
  - (3) devising a policy on diversity of board of directors;
  - (4) identifying persons who are qualified to become directors and who may be appointed in senior management in accordance with the criteria laid down, and recommend to the board of directors their appointment and removal.
  - (5) whether to extend or continue the term of appointment of the independent director, on the basis of the report of performance evaluation of independent directors.
- B. **Stakeholders Relationship Committee**

The Committee shall consider and resolve the grievances of the security holders of the listed entity including complaints related to transfer of shares, non-receipt of annual report and non-receipt of declared dividends.

#### **PART E: DISCRETIONARY REQUIREMENTS**

**[See Regulation 27(1)]**

##### **A. The Board**

A non-executive chairperson may be entitled to maintain a chairperson's office at the listed entity's expense and also allowed reimbursement of expenses incurred in performance of his duties.

##### **B. Shareholder Rights**

A half-yearly declaration of financial performance including summary of the significant events in last six-months, may be sent to each household of shareholders.

##### **C. Modified opinion(s) in audit report**

The listed entity may move towards a regime of financial statements with unmodified audit opinion.

#### **D. Separate posts of chairperson and chief executive officer**

The listed entity may appoint separate persons to the post of chairperson and managing director or chief executive officer.

#### **E. Reporting of internal auditor**

The internal auditor may report directly to the audit committee.

### **SCHEDULE III**

#### **PART A: DISCLOSURES OF EVENTS OR INFORMATION: SPECIFIED SECURITIES**

##### **[See Regulation 30]**

The following shall be events/information, upon occurrence of which listed entity shall make disclosure to stock exchange(s):

- A. Events which shall be disclosed without any application of the guidelines for materiality as specified in sub-regulation (4) of regulation (30):
  1. Acquisition(s) (including agreement to acquire), Scheme of Arrangement (amalgamation/ merger/ demerger/ restructuring), or sale or disposal of any unit(s), division(s) or subsidiary of the listed entity or any other restructuring. Explanation.- For the purpose of this sub-para, the word 'acquisition' shall mean,-
    - (i) acquiring control, whether directly or indirectly; or,
    - (ii) acquiring or agreeing to acquire shares or voting rights in, a company, whether directly or indirectly, such that –
      - (a) the listed entity holds shares or voting rights aggregating to five per cent or more of the shares or voting rights in the said company, or;
      - (b) there has been a change in holding from the last disclosure made under sub-clause (a) of clause
    - (ii) of the Explanation to this sub-para and such change exceeds two per cent of the total shareholding or voting rights in the said company.
  2. Issuance or forfeiture of securities, split or consolidation of shares, buyback of securities, any restriction on transferability of securities or alteration in terms or structure of existing securities including forfeiture, reissue of forfeited securities, alteration of calls, redemption of securities etc.
  3. Revision in Rating(s).
  4. Outcome of Meetings of the board of directors: The listed entity shall disclose to the Exchange(s), within 30 minutes of the closure of the meeting, held to consider the following:
    - (a) dividends and/or cash bonuses recommended or declared or the decision to pass any dividend and the date on which dividend shall be paid/dispatched;
    - (b) any cancellation of dividend with reasons thereof;
    - (c) the decision on buyback of securities;

- (d) the decision with respect to fund raising proposed to be undertaken
  - (e) increase in capital by issue of bonus shares through capitalization including the date on which such bonus shares shall be credited/dispatched;
  - (f) reissue of forfeited shares or securities, or the issue of shares or securities held in reserve for future issue or the creation in any form or manner of new shares or securities or any other rights, privileges or benefits to subscribe to;
  - (g) short particulars of any other alterations of capital, including calls;
  - (h) financial results;
  - (i) decision on voluntary delisting by the listed entity from stock exchange(s).
5. Agreements (viz. shareholder agreement(s), joint venture agreement(s), family settlement agreement(s) (to the extent that it impacts management and control of the listed entity), agreement(s)/treaty(ies)/contract(s) with media companies) which are binding and not in normal course of business, revision(s) or amendment(s) and termination(s) thereof.
  6. Fraud/defaults by promoter or key managerial personnel or by listed entity or arrest of key managerial personnel or promoter.
  7. Change in directors, key managerial personnel (Managing Director, Chief Executive Officer, Chief Financial Officer, Company Secretary etc.), Auditor and Compliance Officer.
  8. Appointment or discontinuation of share transfer agent.
  9. Corporate debt restructuring.
  10. One time settlement with a bank.
  11. Reference to BIFR and winding-up petition filed by any party / creditors.
  12. Issuance of Notices, call letters, resolutions and circulars sent to shareholders, debenture holders or creditors or any class of them or advertised in the media by the listed entity.
  13. Proceedings of Annual and extraordinary general meetings of the listed entity.
  14. Amendments to memorandum and articles of association of listed entity, in brief.
  15. Schedule of Analyst or institutional investor meet and presentations on financial results made by the listed entity to analysts or institutional investors;
- B. Events which shall be disclosed upon application of the guidelines for materiality referred sub-regulation (4) of regulation (30):
1. Commencement or any postponement in the date of commencement of commercial production or commercial operations of any unit/division.
  2. Change in the general character or nature of business brought about by arrangements for strategic, technical, manufacturing, or marketing tie-up, adoption of new lines of business or closure of operations of any unit/division (entirety or piecemeal).
  3. Capacity addition or product launch.
  4. Awarding, bagging/ receiving, amendment or termination of awarded/bagged orders/contracts not in the

normal course of business.

5. Agreements (viz. loan agreement(s) (as a borrower) or any other agreement(s) which are binding and not in normal course of business) and revision(s) or amendment(s) or termination(s) thereof.
  6. Disruption of operations of any one or more units or division of the listed entity due to natural calamity (earthquake, flood, fire etc.), force majeure or events such as strikes, lockouts etc.
  7. Effect(s) arising out of change in the regulatory framework applicable to the listed entity
  8. Litigation(s) / dispute(s) / regulatory action(s) with impact.
  9. Fraud/defaults etc. by directors (other than key managerial personnel) or employees of listed entity.
  10. Options to purchase securities including any ESOP/ESPS Scheme.
  11. Giving of guarantees or indemnity or becoming a surety for any third party.
  12. Granting, withdrawal , surrender , cancellation or suspension of key licenses or regulatory approvals.
- C. Any other information/event viz. major development that is likely to affect business, e.g. emergence of new technologies, expiry of patents, any change of accounting policy that may have a significant impact on the accounts, etc. and brief details thereof and any other information which is exclusively known to the listed entity which may be necessary to enable the holders of securities of the listed entity to appraise its position and to avoid the establishment of a false market in such securities.
- D. Without prejudice to the generality of para (A), (B) and (C) above, the listed entity may make disclosures of event/information as specified by the Board from time to time.

**PART B: DISCLOSURE OF INFORMATION HAVING BEARING ON PERFORMANCE/OPERATION OF LISTED ENTITY AND/OR PRICE SENSITIVE INFORMATION: NON-CONVERTIBLE DEBT SECURITIES & NON-CONVERTIBLE REDEEMABLE PREFERENCE SHARES**

**[See Regulation 51(2)]**

A. The listed entity shall promptly inform to the stock exchange(s) of all information which shall have bearing on performance/operation of the listed entity or is price sensitive or shall affect payment of interest or dividend of non-convertible preference shares or redemption of non convertible debt securities or redeemable preference shares including :

- (1) expected default in timely payment of interests/preference dividend or redemption or repayment amount or both in respect of the non-convertible debt securities and non-convertible redeemable preference shares and also default in creation of security for debentures as soon as the same becomes apparent;
- (2) any attachment or prohibitory orders restraining the listed entity from transferring non-convertible debt securities or non-convertible redeemable preference shares from the account of the registered holders along-with the particulars of the numbers of securities so affected , the names of the registered holders and their demat account details;
- (3) any action which shall result in the redemption, conversion, cancellation, retirement in whole or in part of any non-convertible debt securities or reduction, redemption, cancellation, retirement in whole or in part of any non-convertible redeemable preference shares;
- (4) any action that shall affect adversely payment of interest on non-convertible debt securities or payment of dividend on non-convertible redeemable preference shares including default by issuer to pay interest on non-

convertible debt securities or redemption amount and failure to create a charge on the assets;

- (5) any change in the form or nature of any of its non-convertible debt securities or non-convertible redeemable preference shares that are listed on the stock exchange(s) or in the rights or privileges of the holders thereof and make an application for listing of the securities as changed, if the stock exchange(s) so require;
- (6) any changes in the general character or nature of business / activities, disruption of operation due to natural calamity, and commencement of commercial production / commercial operations;
- (7) any events such as strikes and lock outs. which have a bearing on the interest payment/ dividend payment/ principal repayment capacity;
- (8) details of any letter or comments made by debenture trustees regarding payment/non-payment of interest on due dates, payment/non-payment of principal on the due dates or any other matter concerning the security, listed entity and /or the assets along with its comments thereon, if any;
- (9) delay/ default in payment of interest or dividend / principal amount /redemption for a period of more than three months from the due date;
- (10) failure to create charge on the assets within the stipulated time period;
- (11) any instance(s) of default/delay in timely repayment of interests or principal obligations or both in respect of the debt securities including, any proposal for re-scheduling or postponement of the repayment programmes of the dues/debts of the listed entity with any investor(s)/lender(s).

*Explanation.-* For the purpose of this sub-para, 'default' shall mean Non-payment of interest or principal amount in full on the pre-agreed date and shall be recognized at the first instance of delay in servicing of any interest or principal on debt.

- (12) any major change in composition of its board of directors, which may amount to change in control as defined in Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011;
- (13) any revision in the rating;
- (14) the following approvals by board of directors in their meeting:-
  - (a) the decision to pass any interest payment;
  - (b) short particulars of any increase of capital whether by issue of bonus securities through capitalization, or by way of right securities to be offered to the debenture holders, or in any other way;
- (15) all the information, report, notices, call letters, circulars, proceedings, etc concerning non-convertible redeemable preference shares or non convertible debt securities;
- (16) any other change that shall affect the rights and obligations of the holders of non-convertible debt securities / non-convertible redeemable preference shares, any other information not in the public domain necessary to enable the holders of the listed securities to clarify its position and to avoid the creation of a false market in such listed securities or any other information having bearing on the operation/performance of the listed entity as well as price sensitive information.

#### **PART C: DISCLOSURES OF MATERIAL EVENTS OR INFORMATION: INDIAN DEPOSITORY RECEIPTS**

**[ See Regulation 68(2) ]**

A. The listed entity shall promptly inform to the stock exchange(s) of all events which are material and/or all

information which are price sensitive or have bearing on performance/operation of the listed entity at the same time and to the extent it intimates to the listing authority or any other authority in its home country or other jurisdictions where its securities may be listed or other stock exchange(s) in its home country or other jurisdictions where its securities may be listed including:

- (1) any action or investigations initiated by any regulatory or statutory authority and the purpose for which it was initiated.
- (2) any attachment or prohibitory orders restraining the listed entity from transferring securities out of the names of the registered holders and particulars of the registered holders thereof.
- (3) the meeting of the board of directors which has been held to consider or decide on the following :
  - (a) all dividends and/or cash bonuses recommended or declared or the decision to pass any dividend or cash bonus;
  - (b) the total turnover, gross profit/loss, provision for depreciation, tax provisions and net profits for the year (with comparison with the previous year) and the amounts appropriated from reserves, capital profits, accumulated profits of past years or other special source to provide wholly or partly for any dividend, even if this calls for qualification that such information is provisional or subject to audit;
  - (c) the recommendation or declaration of dividend or rights issue or issue of convertible debentures or of debentures carrying a right to subscribe to equity shares or the passing over of the dividend
  - (d) any decision on buy back of equity shares of the listed entity,;
- (4) Change in
  - (a) board of directors of listed entity by death, resignation, removal or otherwise;
  - (b) managing director;
  - (c) auditors appointed to audit the books and accounts;
  - (d) the compliance officer;
  - (e) the registrar to an issue and/or share transfer agent, domestic depository or the overseas custodian bank;
- (5) any change in the rights attaching to any class of equity shares into which the Indian Depository Receipts are exchangeable;
- (6) short particulars of any increase of capital whether by issue of bonus shares through capitalization, or by rights issue of equity shares, or in any other manner;
- (7) short particulars of the reissues of forfeited shares or securities, or the issue of shares or securities held in reserve for future issue or the creation in any form or manner of new shares or securities or any other rights, privileges or benefits to subscribe thereto;
- (8) short particulars of any other alterations of capital, including calls;
- (9) in the event of the listed entity granting any options to purchase any Indian Depository Receipts the following particulars::
  - (a) the number of Indian Depository Receipts covered by such options, terms thereof and the time within which they may be exercised;

- (b) any subsequent changes or cancellation or exercise of such options;
- (10) Notices, resolutions, circulars, call letters or any other circulars etc. issued or advertised anywhere with respect to:
  - (a) proceedings at all annual and extraordinary general meetings of the listed entity, including notices of meetings and proceedings of meeting;
  - (b) amendments to its constitutional documents as soon as they have been approved by the listed entity in general meeting;
  - (c) compliance with requirements in home country or in other jurisdictions where such securities are listed;
  - (d) any merger, amalgamation, re-construction, reduction of capital, scheme or arrangement involving the listed entity including meetings of equity shareholders, IDR Holders or any class of them and proceedings at all such meetings;
- (11) any other information necessary to enable the IDR Holders to appraise the listed entity's position and to avoid the establishment of a false market in IDRs;

B. The listed entity shall, apart from complying with all specific requirements as above, intimate the stock exchange(s) immediately of events such as strikes, lock outs, closure on account of power cuts, etc. and other material events or price sensitive information or events which shall have a material bearing on the performance / operations of the listed entity both at the time of occurrence of the event and subsequently after the cessation of the event at the same time and as to the extent that it discloses to holders of securities in its home country or in other jurisdictions where such securities are listed;

C. In addition to above, the listed entity shall disclose to the stock exchange(s), any information which is disclosed to any other overseas stock exchange(s) or made public in any other overseas securities market, on which its securities may be listed or quoted, simultaneously with such disclosure or publication, or as soon thereafter as may be reasonably practicable;

D. The listed entity shall submit to the stock exchange(s) on request any other information concerning the listed entity as the stock exchange(s) may reasonably require;

**PART D: DISCLOSURE OF INFORMATION HAVING BEARING ON PERFORMANCE/ OPERATION OF LISTED ENTITY AND/OR PRICE SENSITIVE INFORMATION: SECURITISED DEBT INSTRUMENT**

**[See Regulation 83(2)]**

A. The listed entity shall promptly inform the stock exchange(s) of all information having bearing on the performance/ operation of the listed entity and price sensitive information including:

- (1) any attachment or prohibitory orders restraining the listed entity from transferring securitized debt instruments from the account of the registered holders and particulars of the numbers of securitized debt instruments so affected and the names of the registered holders and their demat account details;
- (2) any action that shall result in the redemption, conversion, cancellation, retirement in whole or in part of any securitized debt instruments;
- (3) any action that shall affect adversely payment of interest on securitized debt instruments;
- (4) any change in the form or nature of any of its securitized debt instruments that are listed on the stock exchange(s) or in the rights or privileges of the holders thereof and to make an application for listing of the said securities as changed, if the stock exchange(s) so requires;



- (5) expected default in timely payment of interest or redemption or repayment amount or both in respect of the securitized debt instruments listed on the recognised stock exchange(s) as soon as the same becomes apparent;
- (6) changes in the General Character or nature of business / activities, disruption of operation due to natural calamity etc;
- (7) revision in rating as a result of credit rating done periodically;
- (8) delay/ default in payment of interest/principal amount to the investors for a period of more than three months from the due date; and
- (9) any other change that shall affect the rights and obligations of the holders of securitized debt instruments, any other information not in the public domain necessary to enable the holders of the listed securitized debt instruments to clarify its position and to avoid the creation of a false market in such listed securities or any other information having bearing on the operation/performance of the listed entity as well as price sensitive information.

#### **SCHEDULE IV**

##### **PART A: DISCLOSURES IN FINANCIAL RESULTS**

##### **[See Regulation 33(1)(e)]**

The listed entity shall disclose the following while preparing the financial results:-

- A. Changes in accounting policies, if any, shall be disclosed in accordance with Accounting Standard 5 or Indian Accounting Standard 8 , as applicable, specified in Section 133 of the Companies Act, 2013 read with relevant rules framed thereunder or by the Institute of Chartered Accountants of India, whichever is applicable.
- B. If the auditor has expressed any modified opinion(s) or other reservation(s) in respect of audited financial results submitted or published under this para, the listed entity shall disclose such modified opinion(s) or other reservation(s) and cumulative impact of the same on profit or loss, net worth, total assets, turnover/ total income, earning per share or any other financial item(s) which may be impacted due to modified opinion(s) or other reservation(s), while publishing or submitting such results.
- C. If the auditor has expressed any modified opinion(s) or other reservation(s) in his audit report or limited review report in respect of the financial results of any previous financial year or quarter which has an impact on the profit or loss of the reportable period, the listed entity shall include as a note to the financial results –
  - (i) how the modified opinion(s) or other reservation(s) has been resolved; or
  - (ii) if the same has not been resolved, the reason thereof and the steps which the listed entity intends to take in the matter.
- D. If the listed entity has changed its name suggesting any new line of business, it shall disclose the net sales or income, expenditure and net profit or loss after tax figures pertaining to the said new line of business separately in the financial results and shall continue to make such disclosures for the three years succeeding the date of change in name: Provided that the tax expense shall be allocated between the said new line of business and other business of the listed entity in the ratio of the (iv) brief description of the project which is pending completion; (v) status of the project and (vi) expected date of commencement of commercial production or commercial operations:

Provided that the details mentioned above shall be approved by the board of directors based on certification

by the chief executive officer and chief financial officer.

- F. All items of income and expenditure arising out of transactions of exceptional nature shall be disclosed.
- G. Extraordinary items, if applicable, shall be disclosed in accordance with Accounting Standard 5 (AS 5 – Net Profit or Loss for the Period, Prior Period Items and Changes in Accounting Policies) or Companies (Accounting Standards) Rules, 2006, whichever is applicable.
- H. The listed entity, whose revenues are subject to material seasonal variations, shall disclose the seasonal nature of their activities and the listed entity may supplement their financial results with information for the twelve month period ending on the last day of the quarter for the current and preceding years on a rolling basis.
- I. The listed entity shall disclose any event or transaction which occurred during or before the quarter that is material to an understanding of the results for the quarter including but not limited to completion of expansion and diversification programmes, strikes and lock-outs, change in management, change in capital structure and the listed entity shall also disclose similar material events or transactions that take place subsequent to the end of the quarter.
- J. The listed entity shall disclose the following in respect of dividends paid or recommended for the year, including interim dividends : (i) amount of dividend distributed or proposed for distribution per share; the amounts in respect of different classes of shares shall be distinguished and the nominal values of shares shall also be indicated; (ii) where dividend is paid or proposed to be paid pro-rata for shares allotted during the year, the date of allotment and number of shares allotted, pro-rata amount of dividend per share and the aggregate amount of dividend paid or proposed to be paid on pro-rata basis.
- K. The listed entity shall disclose the effect on the financial results of material changes in the composition of the listed entity, if any, including but not limited to business combinations, acquisitions or disposal of subsidiaries and long term investments, any other form of restructuring and discontinuance of operations.
- L. The listed entity shall ensure that segment reporting is done in accordance with AS-17 or Indian Accounting Standard 108 as applicable, specified in Section 133 of the Companies Act, 2013 read with relevant rules framed thereunder or by the Institute of Chartered Accountants of India, whichever is applicable.

**PART B: PREPARATION AND DISCLOSURES IN FINANCIAL RESULTS OF LISTED ENTITY WHICH HAS LISTED ITS INDIAN DEPOSITORY RECEIPTS**

**[ See Regulation 70(2) and 71(3) ]**

The listed entity shall comply with the following requirements while preparing the financial results:-

**A. Periodicity of Disclosure of Financial Results**

(1) Financial results may be given on annual, half yearly and/or quarterly basis, as required under the requirements of the home country.

**B. Accounting Principle to be used in preparation and disclosure of financial Results:**

- (1) The listed entity may prepare and disclose its financial results in accordance with Indian GAAP or International Financial Reporting Standards IFRS or US GAAP
- (2) In case the listed entity prepares and discloses the financial results as per US GAAP, a reconciliation statement vis-a-vis Indian GAAP and summary of significant differences between the Indian GAAP and US GAAP has to be annexed.

- (3) If financial results are prepared in accordance with IFRS, then listed entity shall annex only the summary of significant differences between the Indian GAAP and IFRS.
- (4) If the listed entity is shifting from IFRS to US GAAP or vice versa then the accounts relating to the previous period shall be properly restated for comparison;
- (5) The Accounting / Reporting Standard followed for any interim results shall be consistent with that of the Annual results.
- (6) The financial results so submitted shall be based on the same set of accounting policies as those followed in the previous year provided that in case, there are changes in the accounting policies, the results of previous year shall be restated as per the present accounting policies, to make it comparable with current year results;

### **C. Auditing/Limited Review**

- (1) In case the listed entity prepares and discloses the financial results as per Indian GAAP, the listed entity shall ensure that the annual, half yearly and/or quarterly results, as required under the laws, rules or regulations of home country, shall be audited or subject to limited review by a Chartered Accountant in accordance with Auditing and Assurance Standards.
- (2) In case the listed entity prepares and discloses the financial results as per US GAAP or IFRS, the listed entity shall ensure that the annual, half yearly and/or quarterly results, as required under the laws, rules or regulations of home country shall be audited or subject to limited review by professional accountant or certified public accountant in accordance with the International Standards on Auditing. The auditor's report shall also be prepared in accordance with the International Standards on Auditing.

### **D. Disclosures**

- (1) The listed entity shall disclose the audit qualification(s) or any other audit reservation(s) along with the financial results in addition to the explanatory statement as to how audit qualification(s) or any other audit reservation(s) in respect of the audited accounts of the previous accounting year have been addressed in the financial results;
- (2) Format (a) The listed entity shall ensure that, if Indian GAAP is followed in preparation of the financial results the format of the disclosure of financial results shall be as prescribed by the Board.  
  
(b) In case if Indian GAAP is not followed, the format of such disclosure shall be as per the disclosure requirements of the listed entity in the home country where the listed entity is listed.
- (3) The listed entity shall make disclosures of its financial information in its functional currency/reporting currency/national currency and the reporting currency shall be restricted to Sterling Pound/Euro/Yen/US Dollar.
- (4) The listed entity shall provide convenient translation into Indian Rupees of the latest year's/periods statements (as the case may be) of consolidated profit and losses, assets and liabilities and cash flows, at the closing rate of exchange, as at the date on which the financial information is presented.
- (5) The listed entity shall provide convenient translations in English and other notes such that the IDR Holders are able to understand such financial statements.

## **SCHEDULE V: ANNUAL REPORT**

**[See Regulation 34(3) and 53(f)]**

The annual report shall contain the following additional disclosures:

**A. Related Party Disclosure:**

1. The listed entity shall make disclosures in compliance with the Accounting Standard on “Related Party Disclosures”.
2. The disclosure requirements shall be as follows:

<i>Sr. No.</i>	<i>In the accounts of</i>	<i>Disclosure of the amount at the year end and the maximum amount of loans/ advances/ Investments outstanding during the year.</i>
1	Holding Company	<ul style="list-style-type: none"> <li>• Loans and advances in the nature of loans to subsidiaries by name and amount</li> <li>• Loans and advances in the nature of loans to associates by name and amount.</li> <li>• Loans and advances in the nature of loans to firms/companies in which directors are interested by name and amount.</li> </ul>
2	Subsidiary	Same disclosures as applicable to the parent company in the accounts of subsidiary company.
3	Holding Company	Investments by the loanee in the shares of parent company and subsidiary company, when the company has made a loan or advance in the nature of loan.

For the purpose of above disclosures directors' interest shall have the same meaning as given in Section 184 of Companies Act, 2013.

3. The above disclosures shall be applicable to all listed entities except for listed banks.

**B. Management Discussion and Analysis:**

1. This section shall include discussion on the following matters within the limits set by the listed entity's competitive position:

- (a) Industry structure and developments.
- (b) Opportunities and Threats.
- (c) Segment-wise or product-wise performance.
- (d) Outlook
- (e) Risks and concerns.
- (f) Internal control systems and their adequacy.
- (g) Discussion on financial performance with respect to operational performance.

**2. Disclosure of Accounting Treatment:** Where in the preparation of financial statements, a treatment different from that prescribed in an Accounting Standard has been followed, the fact shall be disclosed in the financial statements, together with the management's explanation as to why it believes such alternative treatment is more representative of the true and fair view of the underlying business transaction.

**C. Corporate Governance Report:** The following disclosures shall be made in the section on the corporate governance of the annual report.

- (1) A brief statement on listed entity's philosophy on code of governance.

## (2) Board of directors:

- (a) composition and category of directors (e.g. promoter, executive, non-executive, independent non-executive, nominee director - institution represented and whether as lender or as equity investor);
- (b) attendance of each director at the meeting of the board of directors and the last annual general meeting;
- (c) number of other board of directors or committees in which a directors is a member or chairperson;
- (d) number of meetings of the board of directors held and dates on which held; (e) disclosure of relationships between directors inter-se;
- (f) number of shares and convertible instruments held by non- executive directors;
- (g) web link where details of familiarisation programmes imparted to independent directors is disclosed.

## (3) Audit committee:

- (a) brief description of terms of reference;
- (b) composition, name of members and chairperson;
- (c) meetings and attendance during the year.

## (4) Nomination and Remuneration Committee:

- (a) brief description of terms of reference;
- (b) composition, name of members and chairperson;
- (c) meeting and attendance during the year;
- (d) performance evaluation criteria for independent directors.

## (5) Remuneration of Directors:

- (a) all pecuniary relationship or transactions of the non-executive directors vis-à-vis the listed entity shall be disclosed in the annual report;
- (b) criteria of making payments to non-executive directors. alternatively, this may be disseminated on the listed entity's website and reference drawn thereto in the annual report;
- (c) disclosures with respect to remuneration: in addition to disclosures required under the Companies Act, 2013, the following disclosures shall be made:
  - (i) all elements of remuneration package of individual directors summarized under major groups, such as salary, benefits, bonuses, stock options, pension etc;
  - (ii) details of fixed component and performance linked incentives, along with the performance criteria;
  - (iii) service contracts, notice period, severance fees;
  - (iii) stock option details, if any and whether issued at a discount as well as the period over which accrued and over which exercisable.

## (6) Stakeholders' grievance committee:

- (a) name of non-executive director heading the committee;
- (b) name and designation of compliance officer;

- (c) number of shareholders' complaints received so far;
  - (d) number not solved to the satisfaction of shareholders;
  - (e) number of pending complaints.
- (7) General body meetings:
- (a) location and time, where last three annual general meetings held;
  - (b) whether any special resolutions passed in the previous three annual general meetings;
  - (c) whether any special resolution passed last year through postal ballot – details of voting pattern;
  - (d) person who conducted the postal ballot exercise;
  - (e) whether any special resolution is proposed to be conducted through postal ballot;
  - (f) procedure for postal ballot.
- (8) Means of communication:
- (a) quarterly results;
  - (b) newspapers wherein results normally published;
  - (c) any website, where displayed;
  - (d) whether it also displays official news releases; and
  - (e) presentations made to institutional investors or to the analysts.
- (9) General shareholder information:
- (a) annual general meeting - date, time and venue;
  - (b) financial year;
  - (c) dividend payment date;
  - (d) the name and address of each stock exchange(s) at which the listed entity's securities are listed and a confirmation about payment of annual listing fee to each of such stock exchange(s);
  - (e) stock code;
  - (f) market price data- high, low during each month in last financial year;
  - (g) performance in comparison to broad-based indices such as BSE sensx, CRISIL Index etc;
  - (h) in case the securities are suspended from trading, the directors report shall explain the reason thereof;
  - (i) registrar to an issue and share transfer agents;
  - (j) share transfer system;
  - (k) distribution of shareholding;
  - (l) dematerialization of shares and liquidity;
  - (m) outstanding global depository receipts or american depository receipts or warrants or any convertible instruments, conversion date and likely impact on equity;

- (n) commodity price risk or foreign exchange risk and hedging activities;
  - (o) plant locations;
  - (p) address for correspondence.
- (10) Other Disclosures:
- (a) disclosures on materially significant related party transactions that may have potential conflict with the interests of listed entity at large;
  - (b) details of non-compliance by the listed entity, penalties, strictures imposed on the listed entity by stock exchange(s) or the board or any statutory authority, on any matter related to capital markets, during the last three years;
  - (c) details of establishment of vigil mechanism, whistle blower policy, and affirmation that no personnel has been denied access to the audit committee;
  - (d) details of compliance with mandatory requirements and adoption of the non-mandatory requirements;
  - (e) web link where policy for determining 'material' subsidiaries is disclosed;
  - (f) web link where policy on dealing with related party transactions; (g) disclosure of commodity price risks and commodity hedging activities.
- (11) Non-compliance of any requirement of corporate governance report of sub-paras (2) to (10) above, with reasons thereof shall be disclosed.
- (12) The corporate governance report shall also disclose the extent to which the discretionary requirements as specified in Part E of Schedule II have been adopted.
- (13) The disclosures of the compliance with corporate governance requirements specified in regulation 17 to 27 and clauses (b) to (i) of sub-regulation (2) of regulation 46 shall be made in the section on corporate governance of the annual report.

D. Declaration signed by the chief executive officer stating that the members of board of directors and senior management personnel have affirmed compliance with the code of conduct of board of directors and senior management.

E. Compliance certificate from either the auditors or practicing company secretaries regarding compliance of conditions of corporate governance shall be annexed with the directors' report.

F. Disclosures with respect to demat suspense account/ unclaimed suspense account

- (1) The listed entity shall disclose the following details in its annual report, as long as there are shares in the demat suspense account or unclaimed suspense account, as applicable :
- (a) aggregate number of shareholders and the outstanding shares in the suspense account lying at the beginning of the year;
  - (b) number of shareholders who approached listed entity for transfer of shares from suspense account during the year;
  - (c) number of shareholders to whom shares were transferred from suspense account during the year;
  - (d) aggregate number of shareholders and the outstanding shares in the suspense account lying at the end of the year;

- (e) that the voting rights on these shares shall remain frozen till the rightful owner of such shares claims the shares.

#### **SCHEDULE VI: MANNER OF DEALING WITH UNCLAIMED SHARES**

##### **[See Regulation 39(4)]**

**A.** The listed entity may delegate the following procedural requirements to a share transfer agent.

**B. Reminders to be sent**

- (1) The listed entity shall send at least three reminders at the address as mentioned below:
- (a) For shares in physical form, reminders shall be sent to the address given in the application form as well as last available address as per listed entity's record.
  - (b) For shares in demat form, reminders shall be sent to the address captured in depository's database or address given in the application form, in case of application made in physical form.

**C. Procedure in case of non receipt of response to reminders**

- (1) For shares in demat form, the unclaimed shares shall be credited to a demat suspense account with one of the Depository Participants, opened by the listed entity for this purpose.
- (2) For shares in physical form, the listed entity shall transfer all the shares into one folio in the name of "Unclaimed Suspense Account" and shall dematerialise the shares held in the Unclaimed Suspense Account with one of the Depository Participants.
- (3) The listed entity shall maintain details of shareholding of each individual allottee whose shares are credited to such demat suspense account or unclaimed suspense account, as applicable.
- (4) The demat suspense account or unclaimed suspense account, as applicable shall be held by the listed entity purely on behalf of the allottees who are entitled to the shares and the shares held in such suspense account shall not be transferred in any manner whatsoever except for the purpose of allotting the shares to the allottee as and when he/she approaches the listed entity.

Provided that all such shares, in respect of which unpaid or unclaimed dividend has been transferred under Section 124 (5) of the Companies Act, 2013, shall also be transferred by the listed entity in accordance with Section 124 (6) of the Companies Act, 2013 and rules made thereunder.

**D. Procedure in case of claim by allottee**

(1) As and when the allottee approaches the listed entity, the listed entity shall, after proper verification of the identity of the allottee either credit the shares lying in the Unclaimed Suspense Account or demat suspense account, as applicable, to the demat account of the allottee to the extent of the allottee's entitlement, or deliver the physical certificates after re-materialising the same, depending on what has been opted for by the allottee: Provided that the rematerialising of the physical certificates shall be done only in case where the shares were originally issued in physical form.

**E. Dealing with Corporate Benefits (in terms of securities accruing) and Voting Rights on such Unclaimed Shares**

- (1) Any corporate benefits in terms of securities accruing on such shares viz. bonus shares, split etc., shall also be credited to such demat suspense account or unclaimed suspense account, as applicable for a period of seven years and thereafter shall be transferred by the listed entity in accordance with provisions of



Section 124(5) read with Section 124 (6) of the Companies Act, 2013 and rules made thereunder.

- (2) The voting rights on such unclaimed shares shall remain frozen till the rightful owner claims the shares.

### **SCHEDULE VII: TRANSFER OF SECURITIES**

**[See Regulation 40(7) and 61(4)]**

#### **A. REQUIREMENT OF PAN**

- (1) For registration of transfer of securities, the transferee(s) as well as transferor(s) shall furnish a copy of their PAN card to the listed entity for registration of transfer of securities.
- (2) For securities market transactions and/or for off-market or private transactions involving transfer of shares in physical form, the transferee(s) as well as transferor(s) shall furnish copy of PAN card to the listed entity for registration of such transfer of securities.
- (3) In cases where PAN card is not available i.e. in case of residents of Sikkim, the requirement of PAN Card may be substituted with Identity proof.
- (4) In case of mismatch in PAN card details as well as difference in maiden name and current name, in case of married women, of the holder(s) of securities, the listed entity may collect the PAN card as submitted by the transferee(s) or transferor(s) as the case maybe: Provided that this shall be subject to the listed entity verifying the veracity of the claim of such transferee(s) or transferor(s) by collecting sufficient documentary evidence in support of the identity of the transferee(s) or transferor(s).

#### **B. DIFFERENCES IN SIGNATURE**

(1) In case of minor differences in the signature of the transferor(s), the listed entity shall follow the following procedure for registering transfer of securities: (a) the listed entity shall promptly send to the first transferor(s), via speed post an intimation of the aforesaid defect in the documents and inform the transferor(s) that objection, supported by valid proof, is not lodged by the transferor(s) with the listed entity within fifteen days of receipt of the listed entity's letter, then the securities shall be transferred; (b) if the intimation to the transferor(s) is delivered and the objection from the transferor(s) with supporting documents is not received within fifteen days, the listed entity shall transfer the securities provided the listed entity does not suspect fraud or forgery in the matter:

Provided that the listed entity shall maintain proof of delivery for in their record(s).

(2) In case of major differences in, or non-availability of, the signature of the transferor(s), the listed entity shall follow the following procedure for registering transfer of securities:

- (a) The listed entity shall promptly send to the transferee(s), via Speed Post, an Objection Memo along with the documents in original marking the reason as "material signature difference/ non-availability of signature" and an advice to ensure submission of requested documents of the transferor(s);
- (b) The listed entity shall also send a copy of the Objection memo as per clause (a) of sub-para (2) to the transferor(s), via Speed Post, simultaneously;
- (c) The above Objection Memo in clause (a) and (b) of sub-para (2) shall also state the requirement of additional documents of transferor(s) as follows for effecting the transfer: (i) an Affidavit to update transferor(s) signature in its records; (ii) an original unsigned cancelled cheque and banker's attestation of the transferor(s) signature and address); (iii) contact details of the transferor(s) and ;
- (d) If the intimation to both the transferor(s) and the transferee(s) are delivered, requested documents of the transferor(s) are submitted to the listed entity and the address attested by the bank tallies with the address

available in the database of listed entity, the listed entity, shall transfer the securities provided the listed entity does not suspect fraud or forgery in the matter:

Provided that listed entity shall maintain proof of delivery in their record(s).

### **C. ADDITIONAL DOCUMENTATION REQUIREMENTS IN CASE OF TRANSMISSION OF SECURITIES**

(1) In case of transmission of securities held in dematerialized mode, where the securities are held in a single name without a nominee, for the purpose of following simplified documentation, as prescribed by the depositories vide bye-laws or operating instructions, as applicable, the threshold limit is rupees five lakhs only per beneficiary owner account.

(2) In case of transmission of securities held in physical mode:

(a) where the securities are held in single name with a nominee:

- (i) duly signed transmission request form by the nominee;
- (ii) original or copy of death certificate duly attested by a notary public or by a gazetted officer;
- (iii) self attested copy of PAN card of the nominee.

(b) where the securities are held in single name without a nominee, a affidavit made on appropriate non judicial stamp paper , to the effect of identification and claim of legal ownership to the securities shall be required and additionally

(i) for value of securities, threshold limit of upto rupees two lakh only, per listed entity, as on date of application, one or more of the following documents may be submitted :

- 1. No objection certificate from all legal heir(s) who do not object to such transmission or copy of family settlement deed duly notarized or attested by a gazetted officer and executed by all the legal heirs of the deceased holder;
- 2. indemnity made on appropriate non judicial stamp paper, indemnifying the listed entity ;

(ii) for value of securities, threshold limit, more than rupees two lakh, per listed entity, as on date of application, succession certificate or probate of will or letter of administration or court decree shall be submitted;

(iii) the listed entity however, at its discretion, may enhance value of securities, threshold limit, of rupees two lakh.

### **SCHEDULE VIII - MANNER OF REVIEWING FORM B ACCOMPANYING ANNUAL AUDITED RESULTS**

**[See Regulations 33(6) and 33(7) , 52(3)(b) and 52(3)(c) and 95]**

#### **A. REVIEW BY STOCK EXCHANGE(S)**

The stock exchange(s) shall adopt the following procedure for reviewing the Form B and accompanying annual audit reports submitted in terms of clause (d) of sub-regulation (3) of regulation 33 and clause (a) of sub-regulation (3) of 52:

- (1) Stock exchange(s) shall carry out preliminary scrutiny of reports accompanied by Form B including seeking necessary explanation from the listed entity concerned and consider the same based on materiality of the modified opinion(s).
- (2) The parameters for ascertaining the materiality of modified opinion(s) shall be the impact of these modified

opinions on the profit and loss and financial position of the listed entity.

- (3) For the purpose of uniformity, stock exchange(s) shall consult one another for deciding the criteria for preliminary scrutiny.
- (4) Further, stock exchange(s) shall also consult one another for distributing the work in case shares of the listed entity concerned are listed on more than one stock exchange(s).
- (5) Upon examining the audit reports based on the above parameters, stock exchange(s) shall refer those cases, which, in their opinion, need further examination, to the Board.
- (6) Stock exchange(s) shall display the list of listed entities which have filed their audit reports along with Form B.

#### **B. REVIEW BY THE QUALIFIED AUDIT REPORT REVIEW COMMITTEE**

- (1) The qualified audit report review committee shall be constituted by the board comprising of representatives from Institute of Chartered Accountants of India, stock exchange(s), Ministry of Corporate Affairs etc.
- (2) The qualified audit report review committee shall review the cases received from the stock exchange(s) and guide the Board in processing the annual audit reports with modified opinion(s).
- (3) After analyzing the modified opinion(s) in audit reports, qualified audit report review committee may make the following recommendations:
  - (a) If qualified audit report review committee is of the view that the impact of modified opinion is not significant, it may recommend rectification of such modified opinion in the subsequent financial year;
  - (b) If qualified audit report review committee is of the view that the impact of modified opinion is significant and the explanation given by the listed entity concerned in Form B is unsatisfactory, the case may be referred to the Financial Reporting Review Board of Institute of Chartered Accountants of India, for their opinion on whether the modified opinion is justified.
  - (c) Based on the opinion of the financial reporting review board, qualified audit report review committee may recommend the following:
    - (i) If Financial Reporting Review Board opines that modified opinion is justified, qualified audit report review committee may recommend submission of revised pro-forma financial results, incorporating the effect of the modified opinion, to the stock exchange(s) in the manner as specified in para (E) below.
    - (ii) If financial reporting review board is of the view that modified opinion is not justified, Institute of Chartered Accountants of India may take up the matter appropriately with the statutory auditor of the listed entity.
  - (d) If a modified opinion is not quantifiable, qualified audit report review committee may recommend rectification of such modified opinion in the subsequent financial year.

C. Based on the recommendations of qualified audit report review committee and/or the opinion of Financial Reporting Review Board, the Board may direct the listed entity concerned to rectify its modified opinion and/or submit the revised pro-forma financial results in the manner specified in sub-para (3) of para (B).

D. The Board may, at any stage, in the interest of investors, take any other necessary action as it deems fit.

#### **E. SUBMISSION OF REVISED PRO-FORMA FINANCIAL RESULTS**

- (1) The listed entity shall undertake the following steps for submission of revised pro-forma financial results:

- (a) The listed entity shall submit revised pro-forma financial results, incorporating the effect of the modified opinion, to the stock exchange(s) within two months from the date of receipt of such direction from Board.
- (b) The accounting impact of such modified opinion shall be carried out as a prior period item in the financial statements of the subsequent financial year.

**F.** The review of all Form Bs and the accompanying annual audit reports shall be carried out twice a year based on the reports received up to half year ending on June and December of every year and for this purpose, the following timelines are prescribed:

<i>Activity</i>	<i>To be completed by</i>
Filing of annual audit reports and Form A/Form B by the listed entity	As per the regulations
Preliminary scrutiny of the reports received during the half year (January - June and July - December each year) by stock exchange(s) and referring cases to the Board	One month from the end of half year ending on June and December each year.
Review of the cases by qualified audit report review committee	One month from the date of receipt of report from the stock exchange(s).
Referring cases to Financial Reporting Review Board of Institute of Chartered Accountants of India	Fifteen days from the date of decision of the qualified audit report review committee
Receipt of reply from Financial Reporting Review Board	One month from the date of referral by qualified audit report review committee
Communication of decision on the case to the listed entity concerned and the stock exchange(s).	Fifteen days from the date of decision of qualified audit report review committee / Financial Reporting Review Board
Submission of revised pro-forma financial results by the listed entity concerned.	Within two months from the date of letter of communication to the concerned entity

# SECURITIES AND EXCHANGE BOARD OF INDIA (ISSUE AND LISTING OF DEBT SECURITIES)(AMENDMENT) REGULATIONS, 2012 dated 12th October, 2012

**Dated 24<sup>th</sup> March, 2015**

In Schedule I, in paragraph 3, in sub-paragraph B, in clause (a), in the table,-

(a) the words “call option” wherever appearing has been substituted with the word “call”;

(b) the words “put option” wherever appearing has been substituted with the word “put”.

Schedule I has been substituted with the following, namely,—

## **“SCHEDULE I**

*[See Regulation 5 (2) (b), Regulation 19(3), Regulation 21 and Regulation 21 A]*

## **DISCLOSURES**

1. The issuer seeking listing of its debt securities on a recognized stock exchange shall file the following disclosures along with the listing application to the stock exchange:

- A. Memorandum and Articles of Association and necessary resolution(s) for the allotment of the debt securities;
- B. Copy of last three years audited Annual Reports;
- C. Statement containing particulars of, dates of, and parties to all material contracts and agreements;
- D. Copy of the Board / Committee Resolution authorizing the borrowing and list of authorized signatories.
- E. An undertaking from the issuer stating that the necessary documents for the creation of the charge, where applicable, including the Trust Deed would be executed within the time frame prescribed in the relevant regulations/act/rules etc and the same would be uploaded on the website of the Designated Stock exchange, where the debt securities have been listed, within five working days of execution of the same.
- F. Any other particulars or documents that the recognized stock exchange may call for as it deems fit.
- G. An undertaking that permission / consent from the prior creditor for a second or pari passu charge being created, where applicable, in favor of the trustees to the proposed issue has been obtained.

2. Issuer shall submit the following disclosures to the Debenture Trustee in electronic form (soft copy) at the time of allotment of the debt securities:

- A. Memorandum and Articles of Association and necessary resolution(s) for the allotment of the debt securities;

- B. Copy of last three years' audited Annual Reports;
- C. Statement containing particulars of, dates of, and parties to all material contracts and agreements;
- D. Latest Audited / Limited Review Half Yearly Consolidated (wherever available) and Standalone Financial Information (Profit & Loss statement, Balance Sheet and Cash Flow statement) and auditor qualifications , if any.
- E. An undertaking to the effect that the Issuer would, till the redemption of the debt securities, submit the details mentioned in point (D) above to the Trustee within the timelines as mentioned in Simplified Listing Agreement issued by SEBI vide circular No.SEBI/IMD/BOND/1/2009/11/05 dated May 11, 2009 as amended from time to time, for furnishing / publishing its half yearly/ annual result. Further, the Issuer shall within 180 days from the end of the financial year, submit a copy of the latest annual report to the Trustee and the Trustee shall be obliged to share the details submitted under this clause with all 'Qualified Institutional Buyers' (QIBs) and other existing debenture-holders within two working days of their specific request.

3. The following disclosures shall be made where relevant:

A. Issuer Information

(a) Name and address of the following:-

- (i) Registered office of the Issuer
- (ii) Corporate office of the Issuer
- (iii) Compliance officer of the Issuer
- (iv) CFO of the Issuer
- (v) Arrangers, if any, of the instrument
- (vi) Trustee of the issue
- (vii) Registrar of the issue
- (viii) Credit Rating Agency (-ies) of the issue and
- (ix) Auditors of the Issuer

(b) A brief summary of the business/ activities of the Issuer and its line of business containing atleast following information:-

- (i) Overview
- (ii) Corporate Structure
- (iii) Key Operational and Financial Parameters \* for the last 3 Audited years
- (iv) Project cost and means of financing, in case of funding of new projects

\* At least covering the following - Consolidated basis (wherever available) else on standalone basis

<i>Parameters</i>	<i>Upto latest Half Year</i>	<i>FY... .....</i>	<i>FY... .....</i>	<i>FY... .....</i>
<b>For Non-Financial Entities</b>				
Networth				
Total Debt				
of which				
– Non Current Maturities of Long Term Borrowing				
– Short Term Borrowing				
– Current Maturities of Long Term Borrowing				
Net Fixed Assets				
Non Current Assets				
Cash and Cash Equivalentents				
Current Investments				
Current Assets				
Current Liabilities				
Net sales				
EBITDA				
EBIT				
Interest				
PAT				
Dividend amounts				
Current ratio				
Interest coverage ratio				
Gross debt/equity ratio				
Debt Service Coverage Ratios				
<b>For Financial Entities</b>				
Networth				
Total Debt				
of which				
– Non Current Maturities of Long Term Borrowing				
– Short Term Borrowing				
– Current Maturities of Long Term Borrowing				

Net Fixed Assets				
Non Current Assets				
Cash and Cash Equivalents				
Current Investments				
Current Assets				
Current Liabilities				
Assets Under Management				
Off Balance Sheet Assets				
Interest Income				
Interest Expense				
Provisioning & Write-offs				
PAT				
Gross NPA (%)				
Net NPA (%)				
Tier I Capital Adequacy Ratio (%)				
Tier II Capital Adequacy Ratio (%)				

Gross Debt: Equity Ratio of the Company:-

Before the issue of debt securities	
After the issue of debt securities	

(c) A brief history of the Issuer since its incorporation giving details of its following activities

(i) Details of Share Capital as on last quarter end:-

<i>Share Capital</i>	<i>Rs</i>
Authorized Share Capital	
Issued, Subscribed and Paid-up Share Capital	

(ii) Changes in its capital structure as on last quarter end, for the last five years

<i>Date of Change (AGM/EGM)</i>	<i>Rs</i>	<i>Particulars</i>



(iii) Equity Share Capital History of the Company as on last quarter end, for the last five years:

Date of Allotment	No of Equity Shares	Face Value (Rs.)	Issue Price (Rs.)	Consideration (Cash, other than cash, etc.)	Nature of Allotment (Rs.)	Cumulative			Remarks
						No of equity shares (Rs.)	Equity Share Capital (Rs.)	Equity Share Premium (in Rs)	

Notes: (If any)

(iv) Details of any Acquisition or Amalgamation in the last 1 year.

(v) Details of any Reorganization or Reconstruction in the last 1 year:-

Type of Event	Date of Announcement	Date of Completion	Details

(d) Details of the shareholding of the Company as on the latest quarter end:-

(i) Shareholding pattern of the Company as on last quarter end:-

Sr. No.	Particulars	Total No of Equity Shares	No of shares in demat form	Total Shareholding as % of total no of equity shares

Notes: - Shares pledged or encumbered by the promoters (if any)

(ii) List of top 10 holders of equity shares of the Company as on the latest quarter end:-

Sr. No.	Name of the shareholders	Total No of Equity Shares	No of shares in demat form	Total Shareholding as % of total no of equity shares

(e) Following details regarding the directors of the Company:-

(i) Details of the current directors of the Company\*

Name, Designation and DIN	Age	Address	Director of the Company since	Details of other directorship



- (iv) List of Top 10 Debenture Holders (as on )

<i>Sr. No.</i>	<i>Name of Debenture</i>	<i>Holders Amount</i>

Note: Top 10 holders' (in value terms, on cumulative basis for all outstanding debentures issues) details should be provided.

- (v) The amount of corporate guarantee issued by the Issuer along with name of the counterparty (like name of the subsidiary, JV entity, group company, etc) on behalf of whom it has been issued.
- (vi) Details of Commercial Paper:- The total Face Value of Commercial Papers Outstanding as on the latest quarter end to be provided and its breakup in following table:-

<i>Maturity Date</i>	<i>Amt Outstanding</i>

- (vii) Details of Rest of the borrowing (if any including hybrid debt like FCCB, Optionally Convertible Debentures / Preference Shares) as on ..... :-

<i>Party Name (in case of Facility)/ Instrument Name</i>	<i>Type of Facility / Instrument</i>	<i>Amt Sanctioned/ Issued</i>	<i>Principal Amt outstanding</i>	<i>Repayment Date/ Schedule</i>	<i>Credit Rating</i>	<i>Secured / Unsecured</i>	<i>Security</i>

- (viii) Details of all default/s and/or delay in payments of interest and principal of any kind of term loans, debt securities and other financial indebtedness including corporate guarantee issued by the Company, in the past 5 years.
- (ix) Details of any outstanding borrowings taken/ debt securities issued where taken / issued (i) for consideration other than cash, whether in whole or part, (ii) at a premium or discount, or (iii) in pursuance of an option;

- (h) Details of Promoters of the Company:

- (i) Details of Promoter Holding in the Company as on the latest quarter end

<i>Sr. No.</i>	<i>Name of the shareholders</i>	<i>Total No of Equity Shares</i>	<i>No of shares in demat form</i>	<i>Total share-holding as % of total no of equity shares</i>	<i>No of Shares Pledged</i>	<i>% of Shares pledged with respect to shares owned.</i>

- (i) Abridged version of Audited Consolidated (wherever available) and Standalone Financial Information (like Profit & Loss statement, Balance Sheet and Cash Flow statement) for at least last three years and auditor qualifications , if any. \*
- (j) Abridged version of Latest Audited / Limited Review Half Yearly Consolidated (wherever available) and Standalone Financial Information (like Profit & Loss statement, and Balance Sheet) and auditors qualifications, if any. \*
- (k) Any material event/ development or change having implications on the financials/credit quality (e.g. any material regulatory proceedings against the Issuer/promoters, tax litigations resulting in material liabilities, corporate restructuring event etc) at the time of issue which may affect the issue or the investor's decision to invest / continue to invest in the debt securities.
- (l) The names of the debenture trustee(s) shall be mentioned with statement to the effect that debenture trustee(s) has given his consent to the Issuer for his appointment under regulation 4 (4) and in all the subsequent periodical communications sent to the holders of debt securities.
- (m) The detailed rating rationale (s) adopted (not older than one year on the date of opening of the issue)/ credit rating letter issued (not older than one month on the date of opening of the issue) by the rating agencies shall be disclosed.
- (n) If the security is backed by a guarantee or letter of comfort or any other document / letter with similar intent, a copy of the same shall be disclosed. In case such document does not contain detailed payment structure( procedure of invocation of guarantee and receipt of payment by the investor along with timelines), the same shall be disclosed in the offer document.
- (o) Copy of consent letter from the Debenture Trustee shall be disclosed.
- (p) Names of all the recognised stock exchanges where the debt securities are proposed to be listed clearly indicating the designated stock exchange.
- (q) Other details
  - (i) DRR creation - relevant regulations and applicability.
  - (ii) Issue/instrument specific regulations - relevant details (Companies Act, RBI guidelines, etc).
  - (iii) Application process.

\* Issuer shall provide latest Audited or Limited Review Financials in line with timelines as mentioned in Simplified Listing Agreement issued by SEBI vide circular No.SEBI/IMD/BOND/1/2009/11/05 dated May 11, 2009 as amended from time to time , for furnishing / publishing its half yearly/ annual result.

#### B. Issue details

- (a) Summary term sheet shall be provided which shall include at least following information (where relevant) pertaining to the Secured / Unsecured Non Convertible debt securities (or a series thereof):-

Security Name	Name of the bond which includes (Issuer Name, Coupon and maturity year) e.g. 8.70% XXX 2015.
Issuer	
Type of Instrument	
Nature of Instrument	Secured or Unsecured

Seniority	Senior or Subordinated.
Mode of Issue	Private placement
Eligible Investors	
Listing (including name of stock Exchange(s) where it will be listed and timeline for listing)	
Rating of the Instrument	by Ltd.
Issue Size	
Option to retain oversubscription ( Amount)	
Objects of the Issue	
Details of the utilization of the Proceeds	
Coupon Rate	
Step Up/Step Down Coupon Rate 1	
Coupon Payment Frequency	
Coupon payment dates	Dates on which coupon will be paid.
Coupon Type	Fixed, floating or other coupon structure.
Coupon Reset Process (including rates, spread, effective date, interest rate cap and floor etc).	
Day Count Basis	Actual/ Actual
Interest on Application Money	
Default Interest Rate	
Tenor	Months from the Deemed
Date of Allotment	
Redemption Date	Dates on which Principal will be repaid.
Redemption Amount	
Redemption Premium /Discount	
Issue Price	The price at which bond is issued
Discount at which security is issued and the effective yield as a result of such discount.	
Put Date	
Put Price	

Call Date	
Call Price	
Put Notification Time	Timelines by which the investor need to intimate Issuer before exercising the put option.
Call Notification Time	Timelines by which the Issuer need to intimate investor before exercising the call option.
Face Value	Rs 10 lakhs per instrument for all the issues
Minimum Application and in multiples of thereafter	Debt securities
Issue Timing	
1. Issue Opening Date	
2. Issue Closing Date	
3. Pay-in Date	
4. Deemed Date of Allotment	
Issuance mode of the Instrument	Demat only (for private placement)
Trading mode of the Instrument	Demat only (for private placement)
Settlement mode of the Instrument	Insert details of payment procedure
Depository	
Business Day Convention	
Record Date	15 days prior to each Coupon Payment / Put Option Date / Call Option Date / Redemption date.
Security (where applicable) (Including description, type of security, type of charge, likely date of creation of security, minimum security cover, revaluation, replacement of security).	
Transaction Documents	
Conditions Precedent to Disbursement	
Condition Subsequent to Disbursement	
Events of Default	
Provisions related to Cross Default Clause	N/A (Not Applicable) in case clause is not there else full description of the clause to be provided
Role and Responsibilities of Debenture Trustee	
Governing Law and Jurisdiction	

**Notes:**

1. If there is any change in Coupon Rate rate pursuant to any event including elapse of certain time period or downgrade in rating , then such new Coupon Rate and events which lead to such change should be disclosed payment can't be made due to any reason like sudden bank holiday etc., should be laid down.
3. The list of documents which has been executed or will be executed in connection with the issue and subscription of debt securities shall be annexed.
  - (b) In privately placed issues, additional Covenants shall be included as part of the Issue Details on the following lines, as per agreement between the issuer and investor:
    - (i) Security Creation (where applicable): In case of delay in execution of Trust Deed and Charge documents, the Company will refund the subscription with agreed rate of interest or will pay penal interest of atleast 2% p.a. over the coupon rate till these conditions are complied with at the option of the investor.
    - (ii) Default in Payment: In case of default in payment of Interest and/or principal redemption on the due dates, additional interest of atleast @ 2% p.a. over the coupon rate will be payable by the Company for the defaulting period
    - (iii) Delay in Listing: In case of delay in listing of the debt securities beyond 20 days from the deemed date of allotment, the Company will pay penal interest of atleast 1 % p.a. over the coupon rate from the expiry of 30 days from the deemed date of allotment till the listing of such debt securities to the investor.

The interest rates mentioned in above three cases are the minimum interest rates payable by the Company and are independent of each other.”

**U. K. SINHA CHAIRMAN**

**SECURITIES AND EXCHANGE BOARD OF INDIA**

*Footnote :*

1. The SEBI (Issue and Listing of Debt Securities) Regulations, 2008 were published in the Gazette of India on 6th June, 2008 vide No. LAD-NRO/GN/2008/13/127878.

# SEBI (Prohibition of Insider Trading) Regulations, 2015

SEBI has issued and notified the SEBI (Prohibition of Insider Trading) Regulations, 2015 on 15<sup>th</sup> January, 2015 based on recommendations of Sodhi committee. These Regulations were effective from 120<sup>th</sup> day of the date of notification i.e. on and from 15<sup>th</sup> May, 2015, by repealing SEBI (Prohibition of Insider Trading) Regulations 1992. The new regulations strengthen the legal and enforcement framework, align Indian regime with international practices, provide clarity with respect to the definitions and concepts, and facilitate legitimate business transactions. The Disclosure requirements under these Regulations are discussed below-

## 1. Disclosures of trading by Insiders

*Regulations 6 (2)* : The disclosures to be made by any person shall include those relating to trading by such person's immediate relatives, and by any other person for whom such person takes trading decisions.

It is intended that disclosure of trades would need to be of not only those executed by the person concerned but also by the immediate relatives and of other persons for whom the person concerned takes trading decisions. These regulations are primarily aimed at preventing abuse by trading when in possession of unpublished price sensitive information and therefore, what matters is whether the person who takes trading decisions is in possession of such information rather than whether the person who has title to the trades is in such possession.

*Regulations 6(3)* - The disclosures of trading in securities shall also include trading in derivatives of securities and the traded value of the derivatives shall be taken into account for purposes of this Chapter, provided that trading in derivatives of securities is permitted by any law for the time being in force.

*Regulations 6(4)* - The disclosures made shall be maintained by the company, for a minimum period of five years, in such form as may be specified.

## 2. Disclosures by certain persons –

### Initial Disclosure. Regulation 7 (1)

- (a) Every promoter, key managerial personnel and director of every company whose securities are listed on any recognised stock exchange shall disclose his holding of securities of the company as on the date of these regulations taking effect, to the company within thirty days of these regulations taking effect;
- (b) Every person on appointment as a key managerial personnel or a director of the company or upon becoming a promoter shall disclose his holding of securities of the company as on the date of appointment or becoming a promoter, to the company within seven days of such appointment or becoming a promoter.

### Continual Disclosures: Regulation 7(2)

- (a) Every promoter, employee and director of every company shall disclose to the company the number of such securities acquired or disposed of within two trading days of such transaction if the value of the securities



traded, whether in one transaction or a series of transactions over any calendar quarter, aggregates to a traded value in excess of ten lakh rupees or such other value as may be specified;

- (b) Every company shall notify the particulars of such trading to the stock exchange on which the securities are listed within two trading days of receipt of the disclosure or from becoming aware of such information.

### 3. Disclosures by other connected persons

Any company whose securities are listed on a stock exchange may, at its discretion require any other connected person or class of connected persons to make disclosures of holdings and trading in securities of the company in such form and at such frequency as may be determined by the company in order to monitor compliance with these regulations.

This is an enabling provision for listed companies to seek information from those to whom it has to provide unpublished price sensitive information. This provision confers discretion on any company to seek such information. For example, a listed company may ask that a management consultant who would advise it on corporate strategy and would need to review unpublished price sensitive information, should make disclosures of his trades to the company.

#### Code of Fair Disclosure (Regulation 8)

(1) The board of directors of every company, whose securities are listed on a stock exchange, shall formulate and publish on its official website, a code of practices and procedures for fair disclosure of unpublished price sensitive information that it would follow in order to adhere to each of the principles set out in Schedule A to these regulations, without diluting the provisions of these regulations in any manner.

This provision intends to require every company whose securities are listed on stock exchanges to formulate a stated framework and policy for fair disclosure of events and occurrences that could impact price discovery in the market for its securities. Principles such as, equality of access to information, publication of policies such as those on dividend, inorganic growth pursuits, calls and meetings with analysts, publication of transcripts of such calls and meetings, and the like are set out in the schedule.

(2) Every such code of practices and procedures for fair disclosure of unpublished price sensitive information and every amendment thereto shall be promptly intimated to the stock exchanges where the securities are listed.

This provision is aimed at requiring transparent disclosure of the policy formulated in sub-regulation (1).

#### Principles of Fair Disclosure for purposes of Code of Practices and Procedures for Fair Disclosure of Unpublished Price Sensitive Information - *SCHEDULE A [Sub-regulation (1) of regulation 8]:*

1. Prompt public disclosure of unpublished price sensitive information that would impact price discovery no sooner than credible and concrete information comes into being in order to make such information generally available.
2. Uniform and universal dissemination of unpublished price sensitive unpublished price sensitive information to avoid selective disclosure.
3. Designation of a senior officer as a chief investor relations officer to deal with dissemination of information and disclosure of unpublished price sensitive information.
4. Prompt dissemination of unpublished price sensitive information that gets disclosed selectively, inadvertently or otherwise to make such information generally available.
5. Appropriate and fair response to queries on news reports and requests for verification of market rumours by regulatory authorities.

6. Ensuring that information shared with analysts and research personnel is not unpublished price sensitive information.
7. Developing best practices to make transcripts or records of proceedings of meetings with analysts and other investor relations conferences on the official website to ensure official confirmation and documentation of disclosures made.
8. Handling of all unpublished price sensitive information on a need-to-know basis.

# ASX CORPORATE GOVERNANCE COUNCIL PRINCIPLES AND RECOMMENDATIONS, 2014

Since the release of the second edition in 2007, there has been considerable focus across the world on corporate governance practices in response to Global Financial Crisis. A number of countries have adopted new legislation regulating corporate behaviour and upgraded their corporate governance codes. The ASX Corporate Governance Council also comprehensively reviewed its principles and issued the third edition of the Principles and Recommendations on 27<sup>th</sup> March 2014 reflecting global developments in corporate governance and simplifying the structure of the Principles and Recommendations. The revised principles also provide greater flexibility to listed entities in terms of where they make their governance disclosures.

**Principles and Recommendations are non mandatory:** These Principles and Recommendations recommend corporate governance practices for entities listed on the ASX that are likely to achieve good governance outcomes and meet the reasonable expectations of most investors in most situations. The Principles and Recommendations are not mandatory and do not seek to prescribe the corporate governance practices that a listed entity must adopt.

**Principles and Recommendations are based on “if not, why not” approach:** The “if not, why not” approach is fundamental to the operation of the Principles and Recommendations. Under the Principles and Recommendations, if the board of a listed entity considers that a recommendation is not appropriate to its particular circumstances, it is entitled not to adopt it. However, it must explain why it has not adopted the recommendation – the “if not, why not” approach.

**Application of the Principles and Recommendations:** The Principles and Recommendations apply to all ASX listed entities, established in Australia or elsewhere and whether internally or externally managed. However, other bodies may formulate their governance rules or practices according to these principles as they reflect a contemporary view of appropriate corporate governance standards.

## **Disclosing compliance with the Principles and Recommendations under ASX’s Listing Rules**

The ASX listed entity is required under Listing Rule to include in its annual report a corporate governance statement. The corporate governance statement must disclose the extent to which the entity has followed the recommendations set by the ASX Council during the reporting period. If the entity has not followed a recommendation for any part of the reporting period, its corporate governance statement must separately identify that recommendation and the period during which it was not followed and state its reasons for not following the recommendation and what (if any) alternative governance practices it adopted in lieu of the recommendation during that period.

By requiring listed entities to compare their corporate governance practices with the Council’s recommendations and, where they do not conform, to disclose that fact and the reasons why, Listing Rule acts to encourage listed entities to adopt the governance practices suggested in the Council’s recommendations

**Where to make disclosures as required by the Principles:** A listed entity should disclose information as required by the principles in its annual report or on its website in a clearly delineated “corporate governance” section of the annual report.

**Structure of the Principles and Recommendations:** The Principles and Recommendations are structured around, and seek to promote following 8 central principles:

1. Lay solid foundations for management and oversight
2. Structure the board to add value
3. Act ethically and responsibly
4. Safeguard integrity in corporate reporting
5. Make timely and balanced disclosure
6. Respect the rights of security holders
7. Recognise and manage risk
8. Remunerate fairly and responsibly

There are 29 specific recommendations under these general principles.

### **Principle 1: Lay solid foundations for management and oversight**

A listed entity should establish and disclose the respective roles and responsibilities of its board and management and how their performance is monitored and evaluated.

#### **Recommendations**

- |                    |   |
|--------------------|---|
| Recommendation 1.1 | A listed entity should disclose: <ol style="list-style-type: none"> <li>(a) the respective roles and responsibilities of its board and management; and</li> <li>(b) those matters expressly reserved to the board and those delegated to management.</li> </ol>   |
| Recommendation 1.2 | A listed entity should: <ol style="list-style-type: none"> <li>(a) undertake appropriate checks before appointing a person, or putting forward to security holders a candidate for election, as a director; and</li> <li>(b) provide security holders with all material information in its possession relevant to a decision on whether or not to elect or re-elect a director.</li> </ol>  |
| Recommendation 1.3 | A listed entity should have a written agreement with each director and senior executive setting out the terms of their appointment.   |
| Recommendation 1.4 | The company secretary of a listed entity should be accountable directly to the board, through the chair, on all matters to do with the proper functioning of the board.   |
| Recommendation 1.5 | A listed entity should: <ol style="list-style-type: none"> <li>(a) have a diversity policy which includes requirements for the board or a relevant committee of the board to set measurable objectives for achieving gender diversity and to assess annually both the objectives and the entity's progress in achieving them;</li> <li>(b) disclose that policy or a summary of it; and</li> <li>(c) disclose as at the end of each reporting period the measurable objectives for</li> </ol> |

achieving gender diversity set by the board or a relevant committee of the board in accordance with the entity's diversity policy and its progress towards achieving them, and either:

- o the respective proportions of men and women on the board, in senior executive positions and across the whole organisation (including how the entity has defined "senior executive" for these purposes); or
- o if the entity is a "relevant employer" under the Workplace Gender Equality Act, the entity's most recent "Gender Equality Indicators", as defined in and published under that Act.

Recommendation 1.6 A listed entity should:

- (a) have and disclose a process for periodically evaluating the performance of the board, its committees and individual directors; and
- (b) disclose, in relation to each reporting period, whether a performance evaluation was undertaken in the reporting period in accordance with that process.

Recommendation 1.7 A listed entity should:

- (a) have and disclose a process for periodically evaluating the performance of its senior executives; and
- (b) disclose, in relation to each reporting period, whether a performance evaluation was undertaken in the reporting period in accordance with that process.

## Principle 2: Structure the board to add value

A listed entity should have a board of an appropriate size, composition, skills and commitment to enable it to discharge its duties effectively.

### Recommendations

Recommendation 2.1 The board of a listed entity should:

- (a) have a nomination committee which:
  - o has at least three members, a majority of whom are independent directors; and
  - o if the entity
    - o is chaired by an independent director,
    - o and disclose:
      - o the charter of the committee;
      - o the members of the committee; and
    - o as at the end of each reporting period, the number of times the committee met throughout the period and the individual attendances of the members at those meetings; or
- (b) if it does not have a nomination committee, disclose that fact and the processes it employs to address board succession issues and to ensure that the board

has the appropriate balance of skills, knowledge, experience, independence and diversity to enable it to discharge its duties and responsibilities effectively.

- Recommendation 2.2 A listed entity should have and disclose a board skills matrix setting out the mix of skills and diversity that the board currently has or is looking to achieve in its membership.
- Recommendation 2.3 A listed entity should disclose:
- (a) the names of the directors considered by the board to be independent directors;
  - (b) if a director has an interest, position, association or relationship of the type described in Box 2.3 but the board is of the opinion that it does not compromise the independence of the director, the nature of the interest, position, association or relationship in question and an explanation of why the board is of that opinion; and
  - (c) the length of service of each director.
- Recommendation 2.4 A majority of the board of a listed entity should be independent directors.
- Recommendation 2.5 The chair of the board of a listed entity should be an independent director and, in particular, should not be the same person as the CEO of the entity.
- Recommendation 2.6 A listed entity should have a program for inducting new directors and provide appropriate professional development opportunities for directors to develop and maintain the skills and knowledge needed to perform their role as directors effectively.

### **Principle 3: Act ethically and responsibly**

A listed entity should act ethically and responsibly.

#### **Recommendations**

- Recommendation 3.1 A listed entity should:
- (a) have a code of conduct for its directors, senior executives and employees; and
  - (b) disclose that code or a summary of it.

### **Principle 4: Safeguard integrity in corporate reporting**

A listed entity should have formal and rigorous processes that independently verify and safeguard the integrity of its corporate reporting.

#### **Recommendations**

- Recommendation 4.1 The board of a listed entity should:
- (a) have an audit committee which:
    - o has at least three members, all of whom are non-executive directors and a majority of whom are independent directors; and
    - o is chaired by an independent director, who is not the chair of the board, and disclose:

- o the charter of the committee;
  - o the relevant qualifications and experience of the members of the committee; and
  - o in relation to each reporting period, the number of times the committee met throughout the period and the individual attendances of the members at those meetings; or
- (b) If it does not have an audit committee, disclose that fact and the processes it employs that independently verify and safeguard the integrity of its corporate reporting, including the processes for the appointment and removal of the external auditor and the rotation of the audit engagement partner.

Recommendation 4.2 The board of a listed entity should, before it approves the entity's financial statements for a financial period, receive from its CEO and CFO a declaration that, in their opinion, the financial records of the entity have been properly maintained and that the financial statements comply with the appropriate accounting standards and give a true and fair view of the financial position and performance of the entity and that the opinion has been formed on the basis of a sound system of risk management and internal control which is operating effectively.

Recommendation 4.3 A listed entity that has an AGM should ensure that its external auditor attends its AGM and is available to answer questions from security holders relevant to the audit.

### **Principle 5: Make timely and balanced disclosure**

A listed entity should make timely and balanced disclosure of all matters concerning it that a reasonable person would expect to have a material effect on the price or value of its securities.

#### **Recommendations**

- Recommendation 5.1 A listed entity should:
- (a) have a written policy for complying with its continuous disclosure obligations under the Listing Rules; and
  - (b) disclose that policy or a summary of it.

### **Principle 6: Respect the rights of security holders**

A listed entity should respect the rights of its security holders by providing them with appropriate information and facilities to allow them to exercise those rights effectively.

#### **Recommendations**

- Recommendation 6.1 A listed entity should provide information about itself and its governance to investors via its website.
- Recommendation 6.2 A listed entity should design and implement an investor relations program to facilitate effective two-way communication with investors.

- Recommendation 6.3 A listed entity should disclose the policies and processes it has in place to facilitate and encourage participation at meetings of security holders.
- Recommendation 6.4 A listed entity should give security holders the option to receive communications from, and send communications to, the entity and its security registry electronically.

### **Principle 7: Recognise and manage risk**

A listed entity should establish a sound risk management framework and periodically review the effectiveness of that framework.

#### **Recommendations**

- Recommendation 7.1 The board of a listed entity should:
- (a) have a committee or committees to oversee risk,<sup>36</sup> each of which:
    - o has at least three members, a majority of whom are independent directors; and
    - o is chaired by an independent director, and disclose:
      - o the charter of the committee;
      - o the members of the committee; and
      - o as at the end of each reporting period, the number of times the committee met throughout the period and the individual attendances of the members at those meetings; or
  - (b) if it does not have a risk committee or committees that satisfy (a) above, disclose that fact and the processes it employs for overseeing the entity's risk management framework.
- Recommendation 7.2 The board or a committee of the board should:
- (a) review the entity's risk management framework at least annually to satisfy itself that it continues to be sound; and
  - (b) disclose, in relation to each reporting period, whether such a review has taken place.
- Recommendation 7.3 A listed entity should disclose:
- (a) if it has an internal audit function, how the function is structured and what role it performs; or
  - (b) if it does not have an internal audit function, that fact and the processes it employs for evaluating and continually improving the effectiveness of its risk management and internal control processes.
- Recommendation 7.4 A listed entity should disclose whether it has any material exposure to economic, environmental and social sustainability risks and, if it does, how it manages or intends to manage those risks.



## Principle 8: Remunerate fairly and responsibly

A listed entity should pay director remuneration sufficient to attract and retain high quality directors and design its executive remuneration to attract, retain and motivate high quality senior executives and to align their interests with the creation of value for security holders.

### Recommendations

- Recommendation 8.1      The board of a listed entity should:
- (a) have a remuneration committee which:
    - o has at least three members, a majority of whom are independent directors; and
    - o is chaired by an independent director, and disclose:
      - o the charter of the committee;
      - o the members of the committee; and
      - o as at the end of each reporting period, the number of times the committee met throughout the period and the individual attendances of the members at those meetings; or
  - (b) if it does not have a remuneration committee, disclose that fact and the processes it employs for setting the level and composition of remuneration for directors and senior executives and ensuring that such remuneration is appropriate and not excessive.
- Recommendation 8.2      A listed entity should separately disclose its policies and practices regarding the remuneration of non-executive directors and the remuneration of executive directors and other senior executives.
- Recommendation 8.3      A listed entity which has an equity-based remuneration scheme should:
- (a) have a policy on whether participants are permitted to enter into transactions (whether through the use of derivatives or otherwise) which limit the economic risk of participating in the scheme; and
  - (b) disclose that policy or a summary of it.

**UK Corporate Governance Code, 2014:** The most recent UK Corporate Governance Code was published in September 2014. It is primarily aimed at companies with a Premium Listing of shares in the UK, who are required under the Listing Rules to “comply or explain” in their annual report and accounts, the broad principles of the Code may be of interest to other companies who may consider that it would be beneficial to adopt certain of the provisions. The FRC has emphasised the importance of the board in establishing the correct “tone from the top” and that the board should lead by example to prevent misconduct, unethical practices and support the delivery of long-term success. The FRC was also keen to establish the appropriate relationship between the board’s risk assessment and management responsibilities.

The FRC has proposed that companies make two separate statements in its annual report:

- one stating whether they consider it appropriate to adopt the going concern basis of accounting in preparing the annual and half-yearly financial statements and

- another statement relating to a broad assessment of the company's viability over a specified period, which is expected to be significantly longer than twelve months.

The directors should also confirm in the annual report that they have carried out a robust assessment of the principal risks facing the company, including those that would threaten the business model, future performance, solvency or liquidity. The directors should describe those risks and explain how they are being managed or mitigated.

The main principles of the Code are given below:

### Section A: Leadership

- |                                   |   |
|-----------------------------------|---|
| A.1: The Role of the Board        | Every company should be headed by an effective board which is collectively responsible for the long-term success of the company.  |
| A.2: Division of Responsibilities | There should be a clear division of responsibilities at the head of the company between the running of the board and the executive responsibility for the running of the company's business. No one individual should have unfettered powers of decision. |
| A.3: The Chairman                 | The chairman is responsible for leadership of the board and ensuring its effectiveness on all aspects of its role.  |
| A.4: Non-Executive Directors      | As part of their role as members of a unitary board, non-executive directors should constructively challenge and help develop proposals on strategy.  |

### Section B: Effectiveness

- |                                   |   |
|-----------------------------------|---|
| B.1: The Composition of the Board | The board and its committees should have the appropriate balance of skills, experience, independence and knowledge of the company to enable them to discharge their respective duties and responsibilities effectively. |
| B.2: Appointments to the Board    | There should be a formal, rigorous and transparent procedure for the appointment of new directors to the board.   |
| B.3: Commitment                   | All directors should be able to allocate sufficient time to the company to discharge their responsibilities effectively.  |
| B.4: Development                  | All directors should receive induction on joining the board and should regularly update and refresh their skills and knowledge.   |
| B.5: Information and Support      | The board should be supplied in a timely manner with information in a form and of a quality appropriate to enable it to discharge its duties.   |
| B.6: Evaluation                   | The board should undertake a formal and rigorous annual evaluation of its own performance and that of its committees and individual directors.  |
| B.7: Re-election                  | All directors should be submitted for re-election at regular intervals, subject to continued satisfactory performance.  |

### Section C: Accountability

- |   |  |
|---|--|
| C.1: Financial and Business Reporting     | The board should present a fair, balanced and understandable assessment of the company's position and prospects. |
| C.2: Risk Management and Internal Control | The board should maintain sound risk management and internal control systems.                                    |

- C.3: Audit Committee and Auditors      The board should establish formal and transparent arrangements for considering how they should apply the corporate reporting, risk management and internal control principles and for maintaining an appropriate relationship with the company's auditors.

## **Section D: Remuneration**

- D.1: The Level and Components of Remuneration      Executive directors' remuneration should be designed to promote the long-term success of the company. Performance-related elements should be transparent, stretching and rigorously applied.
- D.2: Procedure      There should be a formal and transparent procedure for developing policy on executive remuneration and for fixing the remuneration packages of individual directors. No director should be involved in deciding his or her own remuneration.

## **Section E: Relations with shareholders**

- E.1: Dialogue with Shareholders      There should be a dialogue with shareholders based on the mutual understanding of objectives. The board as a whole has responsibility for ensuring that a satisfactory dialogue with shareholders takes place.
- E.2: Constructive Use of General Meetings      The board should use general meetings to communicate with investors and to encourage their participation.

# The Depository Receipts Scheme, 2014 (effective from December 15, 2014)

- The Depository Receipts Scheme, 2014 (“2014 Scheme”) which was notified by the Central Government with effect from December 15, 2014. With the notification of the 2014 Scheme, the erstwhile provisions dealing with depository receipts in the Foreign Currency Convertible Bonds and Ordinary Shares (Through Depository Receipt Mechanism) Scheme, 1993 (“1993 Scheme”) stand repealed except to the extent they are relating to foreign currency convertible bonds.
- The 2014 Scheme is based on the recommendations of the Sahoo Committee, which under the chairmanship of Mr. M.S. Sahoo undertook a comprehensive review of the 1993 Scheme and proposed significant revisions.
- Permission to issue unsponsored depository receipts, issuance of depository receipts against all types of securities (and not only equity shares), expanding the definition of “Issuer”, Custodian”, Depository”, permissible jurisdictions, etc. are few of the key features.
- Unlike the 1993 Scheme, a company need not obtain approval of Ministry of Finance before issuing depository receipts. However, approval if any required under FDI policy would still be required.
- Clause 3 of the scheme describes the eligibility of issue of depository receipts. The following persons are eligible to issue or transfer permissible transactions to a foreign depository for the issue of depository receipts:
  - Any Indian company, listed or unlisted, private or public;
  - Any other issuer of permissible securities;
  - Any person holding permissible securities which has not been specifically prohibited from accessing the capital market or dealing in securities. Unsponsored depository receipts on the back of the listed permissible securities can be issued only if such depository receipts gave the holder the right to issue voting instruction and are listed on an international exchange.
- Clause 2(g) defines the term ‘permissible jurisdiction’ as foreign jurisdiction which is a member of the Financial Action Task Force on Money Laundering and the regulator of the securities market in that jurisdiction is a member of the International Organization of Securities Commission. Schedule I of the scheme gives the list of permissible jurisdiction.
- Under the 2014 scheme, the companies will be allowed to issue DRs in all kinds of permissible securities including shares, debentures, bonds, derivatives, units of a mutual fund, collective investment schemes, government securities and right or interest in securities. In the 1993 Scheme, companies could issue DRs only against equity shares of Indian companies.