

## Company Law

### 1 Incorporation of company

Formation of a company involves following procedures –

- ✓ Approval of name.
- ✓ Drafting of Memorandum of Association, typed on stamp paper and signed
- ✓ Articles of Association duly typed on stamp paper and signed (not essential in case of public limited company limited by shares, but still almost invariably submitted).
- ✓ E-filing of documents
- ✓ Submission of required papers like Statutory declaration of compliance, Power of Attorney
- ✓ Payment of filing Fees.
- ✓ Correcting Memorandum and Articles if required by ROC by person holding Power of Attorney
- ✓ Filing final copy of Memorandum and Articles in pdf format, if corrections were made.
- ✓ Collect certificate of incorporation by holder of Power of Attorney.

**1-1 Approval of name** – The first step in formation of a company is getting the proposed name approved from Registrar of Companies of the State where the company is to be incorporated. Availability of a name can be checked using the 'Check Company Name' service under 'Other Services' tab on homepage of MCA i.e. [www.mca.gov.in](http://www.mca.gov.in). Once this is done, chances of rejection of proposed name will be much less.

Name should be indicative of the main object of the proposed company.

Purpose of application is to confirm that the proposed name is not undesirable as per section 20. Same procedure applies for change of name also.

The procedure for approval of name of company has been changed w.e.f. 16-11-2007. Application for approval of name should be made to regional ROC electronically in form 1A with fees of Rs 500.

If some key words or coined words are used, its significance should be stated. If proposed name is based on registered trade mark or application has been made for registration of trade mark, details should be furnished.

Two persons in case of a private company and seven persons in case of public company should be named as promoters/subscribers. They should have obtained DIN.

Registrar of Companies is required to inform approval of name / rejection of proposed name within seven days.

Six names are required to be submitted. If none of these names is found to be acceptable, ROC will give opportunity to propose new names. These are to be submitted within three days. Two opportunities will be given for re-submission of names. If despite this, none of the names is found to be acceptable by ROC, the fees paid will lapse. Then fresh application for name approval with fresh fees should be paid.

Name approved is valid for 60 days. The approval can be renewed once for a period of 30 days by paying fees of Rs 250. If the company is not incorporated within 60 days (or within further 30 days if extension is obtained), the name approved will lapse. Of course, fresh application with fresh fees can be made [Rule 4A as amended w.e.f. 16-11-2007].

As per circular No. 1/95, dated. 16-2-1995, the persons who have applied for approval of name as promoters should be subscribers to the memorandum and articles. If not, at least one person should be common and others should have no objection.

**SRN after submission of application** - Applicant will get SRN (Service Request Number), which can be used to trace position about approval of name.

**Words private limited or Limited** - Name of a company must contain the word 'Limited' or 'Private Limited' at the end. Exemption from this provision is given only to section 25 companies. Such company is termed as 'licensed company'. The license is given to chamber of commerce, trade associations, charitable organisations etc. which are not for profits. A Government company formed as a private company can delete the word 'Private' from its name.

**Criteria in approving a name** - Name should be indicative of the main object of the proposed company. If some key words or coined words are used, its significance should be stated. If proposed name is based on registered trade mark or application has been made for registration of trade mark, details should be furnished. Name should not be identical or should not too nearly resemble the name of another registered company.

Name should not be considered undesirable by Central Government [section 20(1)]  
Offensive name or name suggesting unlawful activity is not permissible.

Name should not violate provisions of Emblems and Names (Prevention of Improper

Use) Act, 1950.

Name misleading i.e. key word suggesting a great scale while company is with small resources. Thus, following are restrictions - word 'Corporation' permitted when authorised capital is Rs 5 crores. Words like International, Global, Asia etc. is permitted if authorised capital is Rs 1 crore. Words like Hindustan, India, Bharat permitted when authorised capital Rs 50 lakhs. Words like Industries/Udyog permitted if capital is Rs 1 crore. Words like 'Enterprise', 'Business' 'Manufacturing' permitted when capital is Rs 10 lakhs.

Change of name of company to reflect business of software (e.g. name containing words like Infosys, Software, Cyber, Cyberspace, Computers etc.) will be permitted only if a substantial portion of its income is derived from software business. - PIB press release dated 16-8-1999.

***Consent of other companies in group for using group name in name of a company*** - If a company intends to use group name as part of its name (e.g. Kirloskar, Birla, Tata, Reliance etc.) it is standard practice of ROC to obtain no objection letters from other group companies.

## 1-2 Procedure after obtaining approval of name

Following documents are to be submitted electronically as scanned attachment to e-form No. 1. After submission, a SRN (Service Request Number) will be generated by system.

- (a) Memorandum of Association duly stamped as per State Stamp Act [section 33(1)(a)] Memorandum and articles have to be signed by all signatories, writing (by hand) their names, address, occupation and number of shares they are subscribing to.
- (b) Articles of Association, if any, duly stamped as per State Stamp Act [compulsory for private company, optional for public company, but almost always filed]
- (c) If company proposes to appoint a person as Managing Director or wholetime director or Manager, a copy of agreement is to be enclosed [section 33(1)(c)]
- (d) Statutory Declaration of Compliance in form 1 u/s 33(2) on stamp paper. The declaration can be signed by Advocate, Practising Company Secretary, practising Chartered Accountant, or by a person named in the articles as Director, Manager or Secretary of the company. The stamp paper should be purchased in name of applicant-subscriber and not in name of company which is yet to be incorporated
- (e) Power of attorney to correct memorandum and Articles and to collect certificate of incorporation (PoA should be on stamp paper as per State Stamp Act. The stamp paper should be purchased in name of applicant-subscriber and not in name of company which is yet to be incorporated).
- (f) If Articles of public company having share capital specify names of directors,

their written consent as attachment to e-form 32.

- (g) Original letter of ROC approving name of company
- (h) Notice of registered office as required u/s 146(1) – It can be filed within 30 days from incorporation in e-form 18. However, as per instructions to e-form 1, e-form 18 is to be filed along with form No. 1.
- (i) Proof of payment of filing fees. The fee payable is specified in Schedule X.

**Submission of original papers in physical form** - The original memorandum of association and articles of association duly stamped signed should be submitted to ROC of concerned State, giving reference to SRN. Original Statutory Declaration of Compliance in form 1 u/s 33(2) on stamp paper and Power of attorney should also be submitted.

### 1-3 Fees payable for registration of a company

Fees payable for registration of a company having share capital depends on nominal share capital and varies from Rs 4,000 to Rs 2,00,04,000. [Rs two crore and four thousand], as follows –

| Nominal share capital<br>(Authorised Capital) | Registration fees Rs                                                          |
|-----------------------------------------------|-------------------------------------------------------------------------------|
| Not exceeding Rs One lakh                     | 4,000                                                                         |
| Above Rs one lakh and upto Rs five lakhs      | 4,000 plus Rs 300 for every Rs 10,000 or part thereof above Rs one lakh       |
| Above Rs five lakhs and upto Rs fifty lakhs   | 16,000 plus Rs 200 for every Rs 10,000 or part thereof above Rs five lakhs    |
| Above Rs fifty lakhs and upto Rs One crore    | 1,06,000 plus Rs 100 for every Rs 10,000 or part thereof above Rs fifty lakhs |
| Above Rs one crore and upto Rs 397.96 crore   | 1,56,000 plus Rs 50 for every Rs 10,000 or part thereof above Rs One crore    |
| Rs 397.96 crore and above                     | Rs two crore and Rs 4,000 (2,00,04,000)                                       |

**Company not having a share capital** – Fee payable is Rs 5,000 when number of members as stated in Articles is unlimited. Fees for filing or registering a document is Rs 50.

**Section 25 companies** – Companies licensed under section 25 will have to pay same registration fees as above [Till 31-12-2007, they were required to pay nominal fee of Rs 50].

**Fee for increase in nominal capital** - If nominal share capital is increased, difference in fees is payable, while filing notice of increase in nominal capital. The differential fees payable is equal to fees payable on increased capital as per Schedule less the amount payable on share capital equal to nominal capital before the increase, at the rates prevailing on date of filing the notice. [Thus, if nominal

share capital is increased from Rs 10 lakhs to Rs 50 lakhs, calculate fees payable on Rs 50 lakhs, calculate fees payable if nominal capital was Rs 10 lakhs and then pay the difference].

#### 1-4 Procedure after e-filing and submission of original documents

The documents are scrutinised by ROC. If the Memorandum/Articles is corrected as required by ROC, final soft copy in PDF format will have to be submitted.

After correction and completion of all requirements, certificate of incorporation will be issued by ROC with CIN (Corporate Identity Number).

**Certificate of commencement of business** - A private company can commence business immediately, while a public company can commence business only after obtaining certificate of commencement of business.

#### 1-5 Alterations to Memorandum and Articles of Association

Any provision in Articles can be changed by a special resolution.

Provisions in respect of change of Memorandum are as follows.

| Clause in Memorandum | Procedure of amending the clause                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
|----------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Name Clause          | Special resolution with approval by Registrar of Companies [section 21]                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
| Registered Office    | * Change outside State - Special Resolution and approval of CLB [section 17(2)] * Board resolution for change within same city or town * Change within same State by Special Resolution (Resolution by postal ballot in case of listed company) [section 146] * If change within Same State but under jurisdiction of another ROC will require permission of Regional Director (section 17A) [Really, in second and third case, there is no alteration in Memorandum, as memorandum states only name of State in which registered office of the company is situated] |
| Object Clause        | Special Resolution [Section 17(1)] (Postal ballot in case of listed company)                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
| Liability Clause     | Unlimited to limited by special resolution and getting fresh registration from ROC [section 32(3)]                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
| Capital Clause       | * Increase, consolidation or division - Ordinary Resolution and notice to ROC [section 94] * Reduction in Capital - Special Resolution and confirmation from Company Court - Section 100                                                                                                                                                                                                                                                                                                                                                                             |
| Subscription Clause  | No need to change arises and hence there is no provision in law to change the subscription clause.                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |

## Overall control of company by Shareholders

**2** The body of members (shareholders) are real owners of the company. However, they have no authority to look after day to day affairs of the company or enter into contracts on behalf of company. They have limited powers. They must meet at least once a year at Annual General Meeting. (AGM).

**Ordinary Business at AGM** - Following is the ordinary business of the company. Normally, this business should be transacted at every AGM. [section 173(1)]—

- Consideration of accounts - to receive and adopt annual accounts of the company.
- Consideration of report of Board of Directors and auditors - To receive and adopt Report of Board of Directors and Auditors
- To declare dividend
- To appoint directors in place of retiring directors
- To appoint auditors for ensuring year and fix their remuneration.

**Special Business** - All business at the meeting other than the aforesaid 'ordinary business' is termed as 'special business'.

### 2-1 Businesses in which the resolutions shall be passed through Postal Ballot only

As per rule 4, following business of public listed company *shall* be transacted through postal ballot. -

**Alteration of Object clause** - alteration in the Object Clause of Memorandum [section 17(1)] – Requires special resolution.

**Alteration of Articles defining private company** - alteration of Articles of Associations in relation to insertion of provisions defining private company. [*This is meaningless as the provision of postal ballot is only for listed company and a listed company cannot be a 'private company'*]. – Requires special resolution.

**Buy back of shares** - buy-back of own shares by the company under section 77A(1). [*However, postal ballot is not required for buy back of 'other specified securities' which includes Employees Stock Option*]. [Buy back of shares upto 10% of total paid up equity capital and free reserves can be made every year with resolution of Board, as per amendment to section 77(2)(b) w.e.f. 23-10-2001. In such cases, postal ballot will not be required]. – Requires special resolution.

**Issue of sweat equity to promoters** - Issue of Sweat equity shares to promoters u/s 79A(1)(d) in case of listed company – It should be by passing ordinary resolution through postal ballot. Promoters will not participate in such resolution, i.e. resolution

shall be passed excluding the voting of promoters. [SEBI (Issue of Sweat Equity) Regulations, 2002].

**Issue of shared with differential voting rights** - issue of shares with differential voting rights as to voting or dividend or otherwise under section 86(a)(ii) – Requires ordinary resolution.

**Change of registered office outside city but within State** - change in place of Registered Office outside local limits of any city, town or village as specified in section 146(2) – Requires special resolution.

**Sale of substantially whole undertaking** - sale of whole or substantially the whole of undertaking of a company as specified under section 293(1)(a). [*The words 'lease or otherwise dispose of' are missing. Thus, postal ballot is not required for usufructuary mortgage of the undertaking. Lease of undertaking is also excluded from provision of postal ballot*]. – Requires ordinary resolution.

**Loans or guarantees in excess of limits** - giving loans or extending guarantee or providing security in excess of the limit prescribed under section 372A(1). [*The words inter corporate investment is missing. Thus, for making corporate investment exceeding the limit u/s 372A, postal ballot is not necessary*] – Requires special resolution.

**Election of small shareholders** - election of a small shareholders' director under proviso to section 252(1) – Requires ordinary resolution

**Variation of rights to class of shares or debentures** - variation in the rights attached to a class of shares or debentures or other securities as specified under section 106 [*In fact, section 106 only provides for variation of rights of shareholders. Thus, extending it to debentures by rules does not seem to be correct*]. – Requires special resolution.

**Waiver of public offer in case of takeover** - Under SEBI code, in case of takeover, the acquirer is required to make public offer to purchase at least 20% of shares. Such public offer is not necessary if change in control takes place in pursuance to special resolution of target company. Such special resolution should be passed by postal ballot. [second proviso to regulation 12 of SEBI (Substantial Acquisition of Shares and Takeovers) Regulation, 1997] ) – Requires special resolution as per SEBI guidelines

## 2-2 Resolutions which are required to be passed as special resolutions

Some important sanctions requiring special resolution are as follows -

| Section No.      | Details                                                                                                                                                                                                                                                                                                         |
|------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 17 and 17A       | Alter object clause, name of company, registered office to other State. Change to other State requires confirmation of Central Government (postal ballot required in case of listed companies). Change within the State but under jurisdiction of different ROC requires permission of RD u/s 17A – see 146(2)) |
| 21               | Change name of Company, subject to approval of Central Government.                                                                                                                                                                                                                                              |
| 25(3)            | To omit the name 'Limited' or 'Private Limited' in case of licensed company.                                                                                                                                                                                                                                    |
| 31(1)            | Alter Articles of Association (postal ballot required in case of listed companies for insertion of provisions relating to private company).                                                                                                                                                                     |
| 77A              | Buy back of securities (postal ballot required in case of listed companies, if in excess of 10% of total paid up capital in a year).                                                                                                                                                                            |
| 79A              | Issue of sweat equity shares (postal ballot required in case of listed companies).                                                                                                                                                                                                                              |
| 81(1A) and 81(3) | Offer further shares to persons other than existing members (i.e. not to make a rights issue)                                                                                                                                                                                                                   |
| 81(3)            | Convert loans or debentures into shares, if approved before issue of debentures or raising of loans.                                                                                                                                                                                                            |
| 99               | To determine that any portion of share capital shall not be called up except in winding up.                                                                                                                                                                                                                     |
| 100(1)           | Reduction in share capital (subject to confirmation by Court)                                                                                                                                                                                                                                                   |
| 106              | Varying rights of holders of class of shares (postal ballot required in case of listed companies for variation of rights attached to class of shares or debentures or other securities).                                                                                                                        |
| 146(2)           | Remove registered office out of city limits, but within the State (postal ballot required in case of listed companies).                                                                                                                                                                                         |
| 149(2A)(b)       | To commence new business.                                                                                                                                                                                                                                                                                       |
| 163(1)           | Keep statutory registers at any place within city / town other than the registered office.                                                                                                                                                                                                                      |
| 208(2)           | Authorise payment of interest out of capital - approval of Central Government is required                                                                                                                                                                                                                       |
| 224(A)(1)        | Appoint statutory auditors when share-holding of                                                                                                                                                                                                                                                                |

|                               |                                                                                                                                                                                                                                                                                                                                                                                              |
|-------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                               | Government, financial institutions and nationalised banks is 25% or more.                                                                                                                                                                                                                                                                                                                    |
| 237(a)(i)                     | Have affairs of the company investigated by inspector appointed by Central Government.                                                                                                                                                                                                                                                                                                       |
| 269 (read with Schedule XIII) | Approval of minimum remuneration to MD/WD/Manager, if more than prescribed 'normal' limit.                                                                                                                                                                                                                                                                                                   |
| 294AA(3)                      | Appoint sole selling agents in certain cases if paid-up capital is Rs 50 lakhs or more.                                                                                                                                                                                                                                                                                                      |
| 309(1)                        | Determine remuneration payable to a director (other than MD) - necessary only if Articles require a special resolution - applicable only to a public company or its subsidiary.                                                                                                                                                                                                              |
| 309(4)                        | Authorising payment by way of commission on basis of percentage of profit, to a director who is not MD or whole time director - applicable only to a public company or its subsidiary.                                                                                                                                                                                                       |
| 314(1), (1B)                  | Approval for holding office of profit under the company or subsidiary for director or his relative or partner, firm, private company etc. in certain cases.                                                                                                                                                                                                                                  |
| 323(1)                        | To alter memorandum of association so as to render unlimited liability of its directors or manager - resolution can be passed only if articles so authorise - such resolution can only apply to future director/s and manager. It does not apply to existing director / directors / manager during his current term, unless he has accorded his consent to his liability becoming unlimited. |
| 372A(1)                       | Make / give investment / loans / guarantee / security beyond 60% / 100% limit (postal ballot required in case of listed companies for giving loans or extending guarantee or providing security in excess of limits).                                                                                                                                                                        |
| 433(a)                        | To get the company wound up by Court.                                                                                                                                                                                                                                                                                                                                                        |
| 484(1)(b)                     | To have the company voluntarily wound up.                                                                                                                                                                                                                                                                                                                                                    |
| 494(1)                        | To authorise liquidator in a voluntary winding up to accept shares as consideration for company's property.                                                                                                                                                                                                                                                                                  |
| 512(1)(a)                     | To authorise liquidator in a members' winding up to exercise powers specified in section 457(1)(a) to (d).                                                                                                                                                                                                                                                                                   |
| 517(1)                        | To accord sanction for any agreement between company and its creditors so as to bind company and its creditors.                                                                                                                                                                                                                                                                              |
| 546(1)(b)                     | To authorise liquidator to exercise certain powers in a voluntary winding up.                                                                                                                                                                                                                                                                                                                |
| 550(1)(b)                     | To direct disposal of books and papers after completion of winding up and about to be dissolved, in case of members' voluntary winding up.                                                                                                                                                                                                                                                   |

|               |                                                                                                                                                                                            |
|---------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 579(1)        | To alter form of constitution of a company registered under part IX of the Act, e.g. a partnership firm registered as a company.                                                           |
| 581H to 581ZL | Resolutions relating to producer company.                                                                                                                                                  |
| SEBI          | Resolution that acquirer need not make public offer to take 20% shares of target company (Required as per SEBI Takeover Regulations) (postal ballot required in case of listed companies). |

In addition, in some cases, approval of Central Government, Court or CLB is required.

### 2-3 Resolutions requiring special notice

Special notice is required for following resolutions - (a) Resolution appointing an auditor other than the retiring auditor or resolution that the retiring auditor shall not be appointed (section 225) (b) Resolution to remove director before expiry of his period and a resolution to appoint another director in place of removed director (section 284). - - Interestingly, in both the cases, only ordinary resolution is required to pass the motion and not special resolution.

As per section 190 of Companies Act, a member intending to move such resolution has to give at least 14 days' clear notice to the company before the general meeting. 'Clear notice' means date of giving notice and date of the general meeting will have to be excluded for calculating period of 14 days. On receipt of such intimation, the company must give its members notice of the resolution in the same manner as notice of general meeting is given. If this is not practicable, notice should be given by advertisement or other mode as may be prescribed in Articles of Association. Such notice must be given at least seven clear days before the meeting.

### 2-4 Resolutions which can be passed as ordinary resolutions

Some important sanctions requiring ordinary resolution are as follows—

| Section No. | Details                                                                                                                                      |
|-------------|----------------------------------------------------------------------------------------------------------------------------------------------|
| 22(1)(a)    | Rectify name of company with approval of Central Government                                                                                  |
| 61          | Vary terms of contract referred to in prospectus or statement in lieu of prospectus.                                                         |
| 79(2)       | Issue shares at discount subject to sanction of CLB                                                                                          |
| 81(1A)(b)   | Issue further shares without making rights issue with approval of Central Government.                                                        |
| 86(a)(ii)   | Issue of shares with differential voting rights as to voting or dividend or otherwise. (postal ballot required in case of listed companies). |
| 94(2)       | Alter company's share capital, if authorised by articles.                                                                                    |

|                               |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
|-------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 98                            | Increase nominal capital by an unlimited company.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
| 121(1)                        | Reissue redeemed debentures.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |
| 149(2B)                       | Commencement of new Business with approval of Central Government.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
| 165                           | Adopt statutory report.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
| 173 and Article 85 of table A | Declare dividend.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
| 210                           | Adopt balance sheet and report of Board of Directors and Auditors at AGM.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
| 214(1)                        | Authorisation by holding company to its representative to inspect books of account of its subsidiaries.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
| 224(1)                        | Appoint auditors and fix their remuneration (power to fix remuneration can be delegated to Board of Directors).                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
| 224(5)                        | Remove auditor and appoint another nominated by any member.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |
| 224(6)                        | Fill casual vacancy in the office of auditor caused by resignation.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
| 252(1) proviso                | Election of small shareholders' director (postal ballot required in case of listed companies).                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
| 255(1)                        | Appoint first directors who are liable to retire by rotation.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
| 256(3)                        | Fill vacancy created by retiring director – same or other person can be appointed as director                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
| 257(1)                        | Appoint person other than the retiring director or regularise appointment of additional director or director appointed in casual vacancy.                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
| 258                           | Increase or reduce number of directors within limits of Articles of company.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |
| 269                           | Appoint MD/WD/Manager and approving his remuneration [If proposed minimum remuneration is more than prescribed 'normal' limit special resolution is required as per Schedule XIII to Companies Act]                                                                                                                                                                                                                                                                                                                                                                                               |
| 284(1)                        | Remove director before expiry of his term and appoint another in his place.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |
| 292(5)                        | Restrict powers of Board u/s 292(1).                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
| 293(1)                        | Approval when Board's powers are restricted e.g. (a) to give consent to dispose of whole or substantially whole of undertaking of the company (b) to remit or give time for debt due from a director (c) to invest otherwise than in trust securities amount of compensation received by the company in respect of compulsory acquisition of its properties (d) to borrow money in excess of aggregate of paid up capital and free reserves (e) to contribute to charitable funds beyond Rs 50,000 or 5% of company's average net profit. (postal ballot required in case of listed companies for |

|                   |                                                                                                                                                                    |
|-------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                   | consent to dispose of whole or substantially whole undertaking of company).                                                                                        |
| 294               | Approve or disapprove appointment of sole selling agent – special resolution required if capital exceeds Rs 50 lakhs and Government approval is required.          |
| 309(1)            | Determine remuneration of directors [special resolution required only if Articles require]                                                                         |
| 313(1)            | To appoint an alternate director in the absence of any power given in the Articles.                                                                                |
| 391(2)            | Approve arrangement and compromise subject to Court's approval.                                                                                                    |
| 484(1)(a)         | Wind up company voluntarily.                                                                                                                                       |
| 490(1)            | Appoint liquidator and fix his remuneration in members' voluntary winding up.                                                                                      |
| 491               | To authorise directors to exercise some of their powers even after appointment of a liquidator in members' voluntary winding up.                                   |
| 492(1)            | Fill vacancy in the office liquidator in members' voluntary winding up.                                                                                            |
| 502(1) and 503(2) | In case of creditors' winding up (a) To nominate liquidator (b) Nominate members of committee of inspection and (c) to consider and pass accounts laid in meeting. |
| 565               | To register an existing company under 1956 Act.                                                                                                                    |
| 581S to 581ZN     | Resolutions relating to producer company.                                                                                                                          |

## Board of Directors

**3** Directors elected by members form a 'Board of Directors', which supervises and regulates the activities of the company. It exercises overall control over the affairs of the company. Section 291(1) makes it clear that the Board of Directors of a company shall be entitled to exercise all such powers, and to do all such acts and things, as the company is authorised to do. The Board must meet at least once in every quarter, i.e. four times a year.

**Quorum for the Board Meeting** - Quorum for a Board meeting should be one-third of total strength of the Board, or two directors, whichever is higher. [section 287(2)]. If number of interested directors is two-third or more, it will be impossible to form a quorum of uninterested directors. In such case, the uninterested directors present will form the quorum. However, minimum two uninterested directors must be present. [proviso to section 287(2)].

### 3-1 Restrictions on Powers of Board

The Board of Directors has vast powers in management of the company. However, certain powers cannot be exercised by Board. These powers can be exercised only by members by resolution at a general meeting. [section 293(1)]. The restrictions u/s 293 are applicable only to public company or a private company which is subsidiary of a public company. Some of these restrictions do not apply to a private company.

However, restrictions u/s 293A (political contributions) and 294 (Appointment of sole selling agent) apply to private company also.

Restrictions u/s 293(1) are –

- Sale or lease of undertaking
- Remitting or giving time for recovery of loan from director
- Investment of compensation received after compulsory acquisition
- Borrowing money in excess of paid up capital and free reserves
- Contribution to charitable trusts

A company can make / give loans / investment / guarantee / security to another company only subject to restrictions as per section 372A.

Payment of commission or sitting fees to directors, payment of remuneration to MD / WD / Manager are as per limits prescribed under Companies Act.

A public company cannot appoint any firm or body corporate to any office or place of profit under the company for a term exceeding five years at a time [section 204(4)].

**Sole selling agents** - Central Government has issued notification No. GSR 272(E) dated 5-4-2007, prohibiting appointment of sole selling agents for bulk drugs, drugs and formulations (as defined in DPCO) for three years., i.e. upto 4-4-2010. There is no prohibition to appoint sole selling agents for sale of bulk drugs in export market. The prohibition will not apply to any *bona fide* preparation included in Ayurvedic (including Siddha) or Unani (Tibb) system of medicine or homeopathic system medicine (earlier notification No. GSR 130(E) dated 23-2-2004 which was valid upto 23-2-2007).

There is no other restriction at present on appointing sole selling agents.

**Contributions than can be made by other companies** - A non-Government company cannot make political contributions in first three financial years after it is incorporated. A non-Government company which is in existence for more than three years can contribute upto 5% of its average net profits during three preceding financial years. The profits should be calculated after allowing the expenditure and after making provisions of depreciation, as per sections 349 & 350. *These restrictions*

*are applicable to a private company also. Disclosure in balance sheet is required.*

### **Limit on Board powers in respect of investment / loan / guarantee**

**3-2** The overall limit of 60% of paid up capital of the company plus free reserves *or* 100% of free reserves, whichever is more has been prescribed for the following -

- Making loan to any other body corporate.
- Giving any guarantee, or providing security, in connection with a loan made by any other person to any body corporate (i.e. loan given to a body corporate)
- Giving any guarantee, or providing security, in connection with a loan made to any other person by any body corporate (i.e. loan given by body corporate)
- Acquiring by way of subscription, purchase or otherwise the securities of any other body corporate

It may be noted that the loan / investment / guarantee / security may be direct or indirect. All these will be covered in the overall ceiling.

The overall limit of all these together is 60% of paid up capital of the company plus free reserves *or* 100% of free reserves, whichever is more. [section 372A(1)]. Loan / guarantees / investment / security above this ceiling can be made / given only with previous approval by a special resolution in general meeting.

**Unanimous Approval of Board** - The investment / loan / security / guarantee should be approved by Board of Directors. The Board resolution should be passed at a meeting, circular resolution or resolution of a committee will not be permissible. All directors present at the meeting must vote in favour of the resolution. [section 372A(2)].

**Delegation of powers for investment** - Section 292 permits delegation of powers of making loans or investment to Committee / MD / Manager / Principal Officer by specifying amounts, nature and purpose. The harmonious construction is that such delegation is permissible, but only after passing unanimous resolution of the Board. Any other interpretation will make provisions of section 292 redundant.

### **3-3 Powers that can be exercised by Board with consent of Central Government**

Following powers can be exercised by Board only subject to consent of Central Government –

***Amendment to Articles providing that a MD / WD / director will not be liable to retire by rotation in public company*** - In case of public company or its subsidiary private company, amendment providing that a MD / WD / director will not be liable to retire by rotation - section 268. It has been clarified that Government approval is required only for 'amendment' of provision of Articles in respect of non-rotational directors. Government approval is not required for insertion of a *new* provision in the Articles. – Letter No. 1(120)/(2001) 43 CLA –I/65 dated 4-11-1965. If permission is required, application should be made in Form No. 25B.

***Appointment of sole selling agents if paid up capital exceeds Rs 50 lakhs*** - Appointment of sole selling agents if paid up capital exceeds Rs 50 lakhs or such person has a substantial interest in the company - section 294AA(2) and (3) [Restrictions apply to private company also]

***Making loans to a director or providing guarantee*** - Making loans to a director or providing guarantee for loan taken by him - section 295 [Restrictions apply to private company also]

***Contract with a director or his relative for purchase of goods or supply of services, if paid up share capital is Rs one crore or more*** - Entering into contract with a director or his relative for purchase of goods or supply of services, if paid up share capital is Rs one crore or more – proviso to section 297(1) [Restrictions apply to private company also]

***Appointment to a place of profit of a relative or partner of director, firm in which director or relative is partner*** - Appointment to a place of profit of a relative or partner of director, firm in which director or relative is partner, or private company where director or his relative is director of member, place of profit in the company carrying a monthly salary of not less than Rs 20,000 - section 314(1B) [Restrictions apply to private company also].

### **3-4 Powers of Board that cannot be delegated by Board to Committee**

Following powers cannot be delegated to the Committee –

| Section No.       | Details                                                                                                                                                                                                                                                                      |
|-------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 292(1)(a)         | Power to make calls on shareholders in respect of money unpaid on their shares.                                                                                                                                                                                              |
| 292(1)(b)         | Power to issue debentures.                                                                                                                                                                                                                                                   |
| 297(4)            | Approval of contracts in which particular director is interested.                                                                                                                                                                                                            |
| 299(1)            | Noting of disclosure of interest by a Director.                                                                                                                                                                                                                              |
| 316(2) and 386(2) | A person who is MD / Manager of one public company can be appointed as MD / Manager of another company only with unanimous resolution at Board meeting.. This resolution cannot be passed in committee meeting.                                                              |
| SS-3              | As per Secretarial Standard (SS-3) of ICSI on Dividend (which is presently recommendatory in nature), recommendation of dividend/declaration of interim dividend should be done at the Board Meeting. It should not be done by circular resolution or by Committee of Board. |

All powers except above can be delegated.

### 3-5 Board Resolutions that cannot be passed by circulation

Some resolutions cannot be passed by circulation by Board. These must be passed only at the Board meeting. Such resolutions are as follows –

| Section No.       | Details                                                                                                                                                                                                                                          |
|-------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 58A               | Acceptance or invitation of public deposits [This is because as per Deposit Rules, date of approval by the Board of text of advertisement/statement in lieu of advertisement has to be specified. It has to be signed by majority of directors]. |
| 77A(2)(b) proviso | Authorising buy back upto 10% of paid up equity capital and free reserves as per <i>proviso</i> to section [section 292(1)(aa) added w.e.f. 23-10-2001]                                                                                          |
| 77A(6)            | Adoption of declaration of solvency in case of company intends to buy back its shares.                                                                                                                                                           |
| 262(1)            | Filling of casual vacancy in Board.                                                                                                                                                                                                              |
| 292(1)(a)         | Make calls on shareholders in respect of money unpaid on their shares.                                                                                                                                                                           |
| 292(1)(aa)        | Authorising buy back upto 10% of paid up equity capital and free reserves as per <i>proviso</i> to section 77A(2)(b)                                                                                                                             |
| 292(1)(b)         | Issue debentures.                                                                                                                                                                                                                                |

|                |                                                                                                                                                                                                                                                                                                                                                                                                        |
|----------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 292(1)(c)      | Borrow moneys otherwise than on debentures                                                                                                                                                                                                                                                                                                                                                             |
| 292(1)(d)      | Invest funds of the company.                                                                                                                                                                                                                                                                                                                                                                           |
| 292(1)(e)      | Make loans.                                                                                                                                                                                                                                                                                                                                                                                            |
| 292(1) proviso | Delegation of powers to borrow moneys, invest funds of the company or to make loans to the extent permissible u/s 292(2), 292(3) and 292(4) - proviso to section 292(1).                                                                                                                                                                                                                               |
| 293A(2)        | Approve contributions to political party or for political purposes.                                                                                                                                                                                                                                                                                                                                    |
| 297(4)         | Approval of contracts in which a particular director or his relative or his partner is interested.                                                                                                                                                                                                                                                                                                     |
| 299(3)(c)      | Taking note of general notice given by director in respect of companies or firms in which he is director or a member and should be regarded as interested in any contract or arrangement with it.                                                                                                                                                                                                      |
| 308(2)         | To receive notice of disclosure of interest by a deemed director u/s 307(10).                                                                                                                                                                                                                                                                                                                          |
| 316(2)         | Appointing a person as Managing Director who is already Managing Director or Manager of another company - special notice of proposed resolution has to be given to all directors, and resolution must be passed with consent of all the directors present at the meeting.                                                                                                                              |
| 372A(2)        | Making / giving Investment / loan / guarantee / security to other companies. [However, delegation within limits is permissible].                                                                                                                                                                                                                                                                       |
| 386(2)         | Appointing a person as Manager who is already Managing Director / Manager of another company - special notice of proposed resolution has to be given to all directors, and resolution must be passed with consent of all the directors present at the meeting.                                                                                                                                         |
| 488(1)         | Declaration of solvency in case of members' voluntary winding up. All directors or majority of directors have to make such declaration at the meeting of Board of Directors.                                                                                                                                                                                                                           |
| SEBI           | Approving quarterly unaudited operating results of the listed company for publication. However, such recording can be done in a meeting of committee of Board of Directors consisting at least one-third of total number of directors. [This is as per clause 41(II)(a) of Listing Agreement – same stipulation in Secretarial Standard (SS-1) of ICSI (which is presently recommendatory in nature)]. |
|                | Approving annexure and proforma prescribed with Cost Audit Report (Rule 7 of Cost Audit Report Rules).                                                                                                                                                                                                                                                                                                 |
| SS-1           | As per Secretarial Standard (SS-1) of ICSI (which is presently recommendatory in nature), Annual Accounts should be approved at a Meeting of Board and not by a circular resolution. Similarly, in case of listed company, if there is more than 20%                                                                                                                                                   |

|      |                                                                                                                                                                                                                                                                                          |
|------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|      | variance between un-audited and audited results, or half yearly report and the limited review report of auditors, reasons are required to be given to stock exchange. This should be discussed in Board meeting and should not be approved by circular resolution.                       |
| SS-3 | As per Secretarial Standard (SS-3) of ICSI on Dividend (which is presently recommendatory in nature), recommendation of dividend/declaration of interim dividend should be done at the Board Meeting. It should not be done by circular resolution or by committee of Board.             |
| SEBI | Constitution of Audit Committee, Remuneration Committee, Shareholders Grievance Committee and Nomination Committee and fixing their authorities/responsibilities should be done in Board meeting, as a good corporate governance practice (though there is no such statutory provision). |

Excluding these, any other resolution can be passed by circulation e.g. - \*

- Authorising officers to file suits, signing tax returns, sales tax forms
- \* Fixing record date
- \* Forming sub-committees (other than audit committee, shareholders' grievance committee and nomination committee)
- \* Appointing additional director, alternate director
- \* Authorising officer to file criminal complaint for dishonour of cheque
- \* Appointing cost Auditor/Practising company Secretary.

### 3-6 Resolutions requiring unanimous voting

All decisions of Board are by simple majority. However, in following cases, the resolution must be unanimously passed, i.e. all directors present must vote in favour of the resolution. If a director is present, he must vote in favour of resolution. If he abstains, the resolution cannot be treated as passed. If the director is interested in a resolution, he cannot vote. Hence, the resolution should be unanimously passed by remaining directors.

***Appointment of MD/Manager in two companies*** - Appointment of a person as Managing Director or Manager of a public company or private company which is subsidiary of a public company, if the person is already MD / Manager of another public company or private company which is subsidiary of a public company. A specific notice of the meeting and proposed resolution has to be given to all directors in India. All directors present should vote in favour of resolution - sections 316(2) & 386(2)

***Making of loan or investment or giving security or guarantee by the company*** - The resolution should be passed with consent of all directors present at the meeting - section 372A(2). [Power to make loans or investment can be delegated to Committee of directors / MD / Manager / Principal Officer of company / Principal officer of branch u/s 292(3) and 292(4) by specifying total amount, nature and purpose. The harmonious construction is that such delegation is permissible, but only by

unanimous resolution of the Board. If this interpretation is not adopted, section 292(3) and 292(4) become redundant ].

## 4 Appointment of Directors

Every public company must have at least three directors. A private limited company or a 'deemed public company' should have minimum two directors. [section 252]. Maximum number of directors depends on Articles of the Company. If Articles do not provide number of directors, or specify number of maximum directors as less than 12, the number of directors can be increased upto 12 in the general meeting by ordinary resolution. If number of directors is to be increased beyond 12, approval of Central Government is necessary. [section 259].

A public limited company or a private company which is a subsidiary of a public company can appoint at the most 1/3 directors as permanent directors, but at least 2/3 of directors must retire by rotation. In case of private company, they need not retire by rotation. [section 255].

### 4-1 Formalities after appointment of director

Following formalities should be completed after appointment of director–

- (a) Obtain from the director details required to be entered in Register of Directors maintained u/s 303(1) – see form 32. Also obtain election commission identity card No (if issued) which is required to be given in Annual return.
- (b) Each director is required to intimate his DIN with copy of DIN allotment letter to company where he is director, in form DIN-2. This intimation should be obtained and details should be informed to ROC within one week in form DIN-3, as per section 266E of Companies Act.
- (c) Confirmation that his number of directorships are within the prescribed limits.
- (d) Obtain from him disclosure of his shareholding and debenture holding in company or subsidiary or holding company of the company in which he is appointed as director, to enable company to maintain prescribed register – section 308(1).
- (e) List of committees of various companies in which he is member and Chairman of any committee (excluding private limited companies, foreign companies and section 25 companies), to ensure that if he is appointed as member / chairman of any committee, SEBI guidelines are not violated (A per clause 49I(C)(ii) of Listing Agreement, a director cannot be Chairman of more than five committees or member of more than 10 committees).
- (f) Obtain declaration from non-executive directors about shareholding in company held either on own or on beneficial basis [Clause 49IV(E)(v) of Listing Agreement].
- (g) Obtain declaration from director that he is not disqualified u/s 274(1)(g). Get declaration in form DD-A (if not obtained before appointment) [If possible, obtain confirmation letters from all companies in which he is director that that

company has submitted all annual returns in time and is not defaulter in payment of deposit, interest on deposit, redemption of debentures or dividend].

- (h) Obtain general notice from him about his directorships or membership of firms and companies where he should be regarded as interested and place it before Board – section 299(3)(a).
- (i) List of his relatives as defined in section 2(41) read with section 6
- (j) Make entry in register of directors maintained u/s 303(1)
- (k) Make entry in register of directors' shareholding maintained u/s 307(1)

**Annual declaration from director** - Companies (Central Government's) General Rules and Forms prescribe form 24AA for giving declaration under section 299. Such declaration should be obtained every year in last month of financial year. It should be placed before Board at the next meeting and should be noted.

**Change in directorship to be informed within 20 days** - In addition to general disclosure every year, if a director, managing director, secretary or manager of any company becomes or ceases to be director, managing director, manager or secretary of other company, he must disclose the change to the company within 20 days. Any failure may entail penalty upto Rs 5,000/-. A 'deemed director' also has to submit these details to company. [section 305(1)]. The purpose is that this will enable company to maintain register of directors as required u/s 303(1).

#### 4-2 Suggested form to obtain information from director

Information may be obtained in following form from director. In addition, declaration should be obtained every year in form 24AA. If required, both can be combined. The information should be updated every year.

|                                                 |  |
|-------------------------------------------------|--|
| Full Name (Surname, middle name and first name) |  |
| Former Name (if any)                            |  |
| Father's/Husband's Name                         |  |
| Usual Residential Address                       |  |
| DIN Number                                      |  |
| Address for communication (if different)        |  |
| Telephone Nos – landline and mobile             |  |
| E-mail address                                  |  |

|                                                                                                     |  |
|-----------------------------------------------------------------------------------------------------|--|
| Fax Number                                                                                          |  |
| Nationality                                                                                         |  |
| Nationality of Origin (if different from present nationality)                                       |  |
| Business Occupation                                                                                 |  |
| Date of Birth                                                                                       |  |
| PAN Number                                                                                          |  |
| Election Commission identity Card No. (if issued)                                                   |  |
| Particulars of directorship or other offices held in other body corporates                          |  |
| Name of body corporate/firm which has nominated me on the Board (only in case of nominee Directors) |  |
| Shareholding in company either on own or on beneficial basis                                        |  |
| Shareholding and debenture holding in company and subsidiary or holding company of the company      |  |
| List of relatives as defined in section 2(41)                                                       |  |

**Relative** - Section 2(41) read with section 6 of Companies Act, 1956 defines 'relative' as follows : - A person shall be deemed to be a relative of another if, and only if, - (a) they are members of a Hindu undivided family; or (b) they are husband and wife; or (c) the one is related to the other in the manner indicated in Schedule I-A of

Companies Act. This Schedule contains following relatives : (1) Father (2) Mother (including step-mother) (3) Son (including step-son) (4) Son's wife (5) Daughter (including step-daughter) (6) Father's father (7) Father's mother (8) Mother's mother (9) Mother's father (10) Son's son (11) Son's son's wife (12) Son's daughter (13) Son's daughter's husband (14) Daughter's husband (15) Daughter's son (16) Daughter's son's wife (17) Daughter's daughter (18) Daughter's daughter's husband (19) Brother (including step-brother) (20) Brother's wife (21) Sister (including step-sister) (22) Sister's husband.

### 4-3 Sitting fees to directors

Directors ( other than whole time directors and Managing Director) work only on part time basis. These directors are 'Non Executive Directors'. These directors are entitled to get fees for attending the Board meetings or Committee meetings. Section 309(2) states that directors can be paid remuneration by way of fee for each meeting of Board or Committee attended by him. *Proviso* to Section 310 provides that increase in sitting fees upto prescribed limit will not require approval of Central Government.

As per rule 10B of Companies General Rules (as amended on 24-7-2003), maximum sitting fees payable per meeting of Board of directors or its committee is as follows –  
 (a) Rs. 20,000 if paid up capital plus free reserves are Rs 10 crore or more **or** turnover is Rs 50 crore or more [Since word used is 'or', it is sufficient if one of the conditions is satisfied] (b) Rs 10,000 in other cases (i.e. company whose paid up capital plus free reserves is less than Rs 10 crores **and** turnover is less than Rs 50 crores). per meeting. Sitting fees more than Rs. 10,000/20,000 can be paid only with Government approval.

In addition, they are entitled to get reimbursement of all reasonable expenses incurred in attending the Board meeting, committee meetings and general meetings of company as per regulation 65(2)(a) as per model Articles Table A.

**Expenses for Attending general meetings** - Directors are not entitled to get sitting fees for attending general meetings but they can claim reimbursement of expenses incurred for attending general meeting as per regulation 65(2)(a) of model Articles as per Table A Articles. If company has not adopted Article A, directors will be entitled to get reimbursement of expenses in attending general meetings, if company has made provision in Articles similar to regulation 65(2)(a) of model Articles Table A.

**Approval for payment of sitting fees** - Sitting fee is part of managerial remuneration. *Proviso* to section 310(1) makes it clear that sitting fee is part of managerial remuneration. As per section 198(1), managerial remuneration is payable on basis of percentage of profit. However, section 198(2) provides that the percentage shall be exclusive of sitting fees. Thus, sitting fees can be paid to

directors even if company is making losses.

Model Articles as per Table A do not make any specific provision in respect of sitting fee. Hence, it will be necessary either to amend the Articles or approve payment of sitting fees in general meeting by way of ordinary resolution (unless Articles of company require special resolution for approval of managerial remuneration). It is advisable that Articles are amended to provide that sitting fees upto to limit prescribed under Companies Act and rules/regulations made under the Act can be paid to directors, and sitting fees can be decided by Board within those limits. In such case, any further approval from shareholders is not required.

**Approval in AGM not required for payment of sitting fees** - As per clause 49I(B) of Listing Agreement, in case of listed company, managerial remuneration of non-executive directors should be fixed by Board and approved in general meeting. However, sitting fees paid to non-executive directors as authorized by the Companies Act, 1956 would not require the approval of shareholders – SEBI press release No. PR-182/2005 dated 30-12-2005 and circular dated 13-1-2006.

**No sitting fee to MD/WD** - A managing director or wholtime director who is getting remuneration as per schedule XIII, is not entitled to sitting fee - Department letter dated 18-8-1990. Even if sitting fee is paid, it will be treated as 'other allowance' and overall limit on salary will be subject to limit of managerial remuneration specified in schedule XIII.

**Sitting fee and allowances for adjourned meeting** – If meeting is adjourned for want of quorum, sitting fee is payable for adjourned Board meeting also, since fee and allowance is for 'attending' the meeting. Even if meeting was adjourned for want of quorum, it does not mean that the director did not attend the meeting – DCA circular No. 1 of 1972 dated 2-2-1972.

### **Ceiling of total managerial remuneration**

**4-4** The total managerial remuneration payable by a public company to its directors and manager shall not exceed 11% of net profits of that company, computed in accordance with sections 349 and 350, except that remuneration of the directors shall not be deducted from the gross profits. [section 198(1)]. Ceiling on remuneration payable to MD / WD together shall not exceed 5% if there is only one MD / WD. If there are more than one MD / WD, the remuneration shall not exceed 10% of net profits for all of them together.

**Remuneration to non-executive (part-time) directors based on profits** – In addition to sitting fees, the part time directors may be paid remuneration by way of share of 'net profit'. Such remuneration is payable only if there is provision in the Articles of the company or by a resolution in the general meeting. All the non-

executive directors together can get remuneration either (a) on monthly / quarterly / yearly basis with approval of Central Government, or (b) by way of commission. Remuneration by way of commission is payable only when special resolution is passed.

The upper ceiling on such remuneration is as follows - (a) upto 1% of 'net profits', if the company has Managing Director, whole-time Director or Manager. (b) Upto 3% of 'net profits', if the company does not have any MD, Whole-time director or Manager. Remuneration in excess of 1% / 3% is payable only with approval of Central Government [section 309(4)]. This percentage is exclusive of sitting fees. [section 198(2)].

**No remuneration free of income tax** - Company cannot pay remuneration which is free of income tax, i.e. the remuneration is subject to income tax at the hands of the director. [section 200]

Following chart gives a summary of provisions at a glance.

| Sl. No | Person entitled to remuneration                                                                                                                                                                                                                                                                             | Maximum % of net profit |
|--------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------|
| 1.     | For all Non-Executive Directors where the company has one or more Managing/Whole time Director or a Manager [proviso (i) to section 309(4)]                                                                                                                                                                 | 1%                      |
| 2.     | For all Non-Executive Directors where there is no Managing or Whole time Director or Manager [proviso (ii) to section 309(4)]                                                                                                                                                                               | 3%                      |
| 3.     | For Managing Director where there is only one Managing Director                                                                                                                                                                                                                                             | 5%                      |
| 4.     | For Whole time Director where there is only one Whole time Director                                                                                                                                                                                                                                         | 5%                      |
| 5.     | For all Managing Directors/Whole-time Directors where there is more than one Managing Director/Joint Managing Director/Deputy Managing Director or more than one whole time Director (to all managerial personnel put together should not exceed 10%) [Part II section I of Schedule XIII of Companies Act] | 10%                     |
| 6.     | Manager (there cannot be more than one Manager) [Part II section I of Schedule XIII of Companies Act]                                                                                                                                                                                                       | 5%                      |
| 7.     | Total Managerial Remuneration to all Directors, Managing Directors/Whole time Directors/manager put together, excluding sitting fees [section 198]                                                                                                                                                          | 11%                     |

## Managing and wholetime Director

**5** The Board of Directors cannot look after day to day affairs of the company. They, therefore, appoint a Manager, Managing Director or wholetime Director to look after

day to day affairs of the company. Such Manager, Managing Director or wholetime Director works under overall supervision and control of the Board of Directors.

**Compulsory appointment in some cases** - A company having paid-up share capital of Rs five crores or more must appoint a 'Managerial Person'. 'Managerial Person' means a Managing Director, whole-time director or Manager. Appointment or re-appointment of any one of these 'Managerial Person' is enough. These provisions are applicable only to public company or a private company which is subsidiary of a public company [section 269(1)]. When his appointment or re-appointment is made, a return electronically in form 25C should be filed within 90 days with Registrar of Companies. [section 269(2)].

**How MD acquires powers** - As the aforesaid definition makes clear, the MD can acquire substantial powers by (a) Agreement with the company - naturally such agreement will have to be approved either in the general meeting or by Board of Directors (b) Resolution passed by a company in the general meeting (c) Resolution passed by Board of Directors or (d) Providing those powers in the Articles of the company itself. Model Articles in Table A do not provide any specific powers to Managing Director/Manager.

**No approval or restrictions in case of private company** - No approval of Central Government is necessary for appointment or re-appointment of a 'Managerial Person' of a private company which is not a subsidiary of a public company. In such companies, there are no restrictions regarding remuneration or terms and conditions, as per section 269(2).

**Age Limit for appointment** - A person can be appointed as 'Managerial Person' when he has attained age of 25 years but is less than 70 years of age. A person above 18 years but below 25 years or even a person who is over 70 years of age can be appointed as 'Managerial Person' by a special resolution passed by the company in general meeting. If such special resolution is passed, further approval from Central Government is not necessary. If special resolution is not passed, approval of Central Government is necessary. [Schedule XIII Part I].

**Residential status of Managerial Person** - Following person can be appointed as 'Managerial Person' - \* Resident of India \* Person who has been staying in India for a continuous period of at least 12 months immediately preceding his appointment and who has come to stay in India for taking up employment or for carrying on business or vocation in India. If the person does not satisfy the criteria, approval of Central Government is required.

The aforesaid condition is not applicable for appointment of a non-resident as MD/WD in Special Economic Zone (SEZ). He should have a proper employment visa from Indian mission abroad and should furnish details of company, principal employer and terms of appointment along with visa application. In such case, approval of Central Government is not required. – GSR 670(E) dated 30-9-2002.

***When approval of Central Government is necessary for appointing MD/WD -***

Appointment or re-appointment of 'Managerial Person' (Managing Director, Whole-time Director or Manager) requires approval only when the appointment or re-appointment is not according to terms and conditions specified in Schedule XIII. If the appointment or re-appointment is according to those terms, approval of Central Government is not necessary [section 269(2)].

Broadly, Approval or appointment of Managerial Person from Central Government is necessary only in following cases - (a) He has been convicted under economic offence (b) He has been detained under COFEPOSA (c) His age is over 18 but less than 25 or over 70 years of age and special resolution is not passed in the general meeting. (d) He is non-resident and was not staying in India for at least 12 months prior to his appointment. **or** (e) Remuneration proposed is more than the amount prescribed in Part II of Schedule XIII. *In all other cases, approval of Central Government is not necessary.*

***Appointment of MD/Manager in more than two companies*** - Normally, a person is expected to be appointed as Managing Director/Manager in one company. However, if a person is appointed as MD/Manager in one company, he can be appointed as MD/Manager in another company. Such appointment has to be made or approved at a meeting of Board of Directors with the consent of all directors present. A specific notice of proposed resolution has to be given to all directors then in India [section 316(2) for appointment of MD and section 386(2) for appointment of Manager].

**5-1 Appointment of MD/WD**

Appointment and fixation of remuneration of a 'Managerial Person' (MD / WD / Manager) is subject to approval in the general meeting by ordinary resolution. [Schedule III Part III]. If such approval is not accorded in the first general meeting after his approval, he ceases to act as MD / WD / Manager. However, special resolution u/s 314 is not required, as appointment of MD / WD is not considered as a 'place of profit'.

***Appointment of MD only five years at a time*** - A person can be appointed as 'Managing Director' only for five years at a time. He can be re-appointed, re-employed or his term may be extended, but only for five years at a time. Such re-appointment or extension cannot be sanctioned earlier than two years from the date when earlier appointment is expiring and new appointment will come into force, i.e. after three years of his initial appointment. [section 317]. This section does not apply to private company which is not a subsidiary of a public company. [section 317(4)].

This section mentions only Managing Director and not 'wholetime director'. However, as per definition of Managing Director in section 2(26), any director who is entrusted with substantial powers of management, by whatever name called, will be 'Managing Director'. Hence, it will not be proper to appoint a wholetime director for more than 5 years at a time. Even a director appointed as 'Manger' may come under definition of

'Managing Director'. In that case, he cannot be appointed for more than 5 years at a time.

## 5-2 Remuneration to MD/WD

Remuneration upto following limits can be paid to a Managerial Person (MD/WD/Manager). Remuneration above these limits require approval of Government. [section 310]. Remuneration of MD/WD/Manager can be increased by company within the ceilings prescribed. Remuneration above those limits require approval of Government. [section 311]. Provisions of remuneration to MD / WD are applicable to remuneration of Manager also. [section 387].

Part II of Schedule XIII contain guidelines for remuneration of MD/WD/Manager. If the remuneration is within these limits, approval of Central Government is not necessary.

***Private company exempted*** - This provision is applicable only in respect of public company or a private company which is subsidiary of a public company. Thus, these provisions do not apply to a private company, which is not a subsidiary of a public company.

***Remuneration when company is making profits*** - If the company is a profit making company, remuneration payable is 5% of net profits, calculated as per calculations under sections 198 & 309 of Companies Act. The remuneration may be by way of salary, Dearness allowance, perquisites, commission and other allowances. [The term 'perquisites' includes contribution to PF, superannuation fund, gratuity and encashment of leave as these have been clearly specified as 'perquisites' in section II, part II of schedule XIII].

If there are more than one MD/WD/Manager, total managerial remuneration shall not exceed 10% of net profits of the company. A MD/WD/Manager can draw remuneration from two companies, but total remuneration received by him shall not exceed the higher maximum limit admissible from any one of the companies of which he is a managerial person.

## 5-3 Minimum Remuneration when profit is inadequate or company is in loss

MD/WD/Manager is entitled to minimum remuneration if company is making losses or if the profit is inadequate. The ceiling on minimum remuneration has been prescribed in Part II of Schedule XIII. Company can pay remuneration to a MD/WD/Manager lower than the ceiling but not more. A person can draw remuneration from two companies, but total remuneration received by him shall not exceed the higher maximum limit admissible from any one of the companies of which he is a MD/WD/Manager.

If the requirements are not satisfied, approval of Central Government will be required

to pay minimum remuneration to a MD/WD/Manager.

**Basis of minimum remuneration** - The remuneration is based on 'effective capital' of the company, and whether the remuneration is (a) approved by Remuneration Committee and passed as ordinary resolution in general meeting or (b) approved by remuneration committee and in general meeting by special resolution for period upto 3 years (c) approved by remuneration committee, special resolution in general meeting by special resolution for upto 3 years and approval by Central Government.

**Normal Minimum Remuneration** - The normal minimum remuneration that can be paid without approval of Central Government is as per the following slabs - (a) Effective capital less than Rs 1 crore - Maximum Remuneration Rs 75,000 per month. (b) Effective capital Rs 1 crore and above but less than Rs 5 crores - Maximum Remuneration Rs 1,00,000 per month. (c) Effective capital Rs 5 crores and above but less than Rs 25 crores - Maximum Remuneration Rs 1,25,000 per month. (d) Effective capital Rs 25 crores and above but less than Rs 50 crores - Maximum Remuneration Rs 1,50,000 per month (e) Effective capital Rs 50 crores and above but less than Rs 100 crores - Maximum Remuneration Rs 1,75,000 per month (f) Effective capital Rs 100 crores or more - 2,00,000 per month.

The conditions for payment of above remuneration are (a) The remuneration should be approved by Remuneration Committee of Board **and** (b) The company should not have made any default in repayment of any debts (including public deposits) or debentures or interest payable thereon for a continuous period of 30 days in the preceding financial year before the date of appointment of the managerial person. [In other words, a sick company which is in default in payment of interest or repayment of debt cannot pay any 'minimum remuneration' at all without approval of Central Government. – a very hard step indeed].

**Higher i.e. upto double the normal remuneration with special resolution** - The aforesaid 'normal' minimum remuneration in absence of profits can be increased upto double the amount, as per following higher slabs - (a) Effective capital less than Rs 1 crore - Maximum Remuneration Rs 1,50,000 per month. (b) Effective capital Rs 1 crore and above but less than Rs 5 crores - Maximum Remuneration Rs 2,00,000 per month. (c) Effective capital Rs 5 crores and above but less than Rs 25 crores - Maximum Remuneration Rs 2,50,000 per month. (d) Effective capital Rs 25 crores and above but less than Rs 50 crores - Maximum Remuneration Rs 3,00,000 per month (e) Effective capital Rs 50 crores and above but less than Rs 100 crores - Maximum Remuneration Rs 3,50,000 per month (f) Effective capital Rs 100 crores or more - 4,00,000 per month.

The conditions for payment of above i.e. upto double the normal minimum remuneration are (a) The remuneration should be approved by Remuneration Committee of Board **and** (b) The company should not have made any default in repayment of any debts (including public deposits) or debentures or interest payable thereon for a continuous period of 30 days in the preceding financial year before the

date of appointment of the managerial person **and** (c) A special resolution should be passed in general meeting. [provisions of 'special resolution' and 'Remuneration Committee' are discussed later] **and** (d) Such special resolution cannot be passed for a period exceeding three years **and** (e) Required disclosures in the Corporate Governance Section of Directors Report, if Directors' Report has such a section.

**Remuneration above double normal limit with Government approval** - Minimum remuneration even higher than the aforesaid limits can be paid. The company has to comply with all the five conditions specified above, i.e. remuneration committee, no default in debt repayment and interest, special resolution for three years and disclosure in Corporate Governance Section of Directors' Report. **In addition**, Central Government approval will be required. *However, such higher remuneration (i.e. more than double the normal remuneration) cannot be paid if the effective capital of the company is negative.* [There is drafting mistake in the Schedule, and exact intention is not clear].

**Special provisions in respect of units in SEZ** – Restrictions in respect of managerial remuneration under Companies Act have been relaxed in case of companies in Special Economic Zones. The remuneration can be upto Rs 20 lakhs per month (Rs 2.40 crores per annum) without approval of Central Government. The relaxation is applicable if (a) The company has not raised any money by public issue of shares or debentures in India. (b) The company has not made any default in India in repayment of any of its debts (including public deposits) or debentures or interest payable thereon for a continuous period of 30 days in any financial year. [GSR 565(E) dated 14-8-2002].

**Perquisites allowable** - In addition to above remuneration, a managerial person is entitled to following perquisites - (a) Contribution to Provident Fund, superannuation fund or annuity fund to the extent not taxable under Income-tax Act (b) Gratuity at rate not exceeding half month's salary for each completed year of service **and** (c) Leave encashment at the end of tenure.

**Leave encashment** - There are no provisions in respect of leave and encashment of leave. It is expected that the company will have standard rules in this regard applicable to all employees and the same will be applicable to the managerial person. Similarly, in case of foreign or NRI director, rules of LTC (Leave Travel Concession) framed by the company will be applicable.

**Reimbursement of travel expenses after expiry of tenure** - Though there is no provision for reimbursement of expenses of travel of MD / WDs, his family members and transportation of his personal luggage from his place of duty to his home town after expiry of his tenure, department has clarified that reimbursement of such expenses is permissible, if relevant travelling rules of company so provide. Approval of Central Government is not required - Circular No. 9/93 dated 28-7-1993.

**No payment for past services** - It has been clarified that no payment should be

made to retired directors or managers for their past services - Department press note dated 9-8-1963.

***Sitting fees within overall remuneration only*** - Managing Director / Wholetime directors are not entitled to sitting fees. If any sitting fee is paid, it will be treated as 'other allowances' and the overall managerial limit shall be including such sitting fees.

***Special resolution of minimum remuneration above 'normal' limits*** – As explained above, minimum remuneration above 'normal remuneration' can be paid, for which approval in general meeting by special resolution is required. While sending notice of general meeting for purpose of passing a special resolution approving minimum remuneration, a statement giving prescribing information shall be sent. The prescribed details, in brief are – (a) General information about industry, financial performance, export performance (b) Information about appointee about his background, past remuneration, job profile, pecuniary relationship with company, remuneration proposed (c) Reasons for loss or inadequate profits and steps taken for improvement and expected profits (d) Disclosure of remuneration package.

***Disclosure in Directors report if remuneration above normal remuneration*** - In addition to the prescribed disclosures in notice to shareholders, specified disclosures should be made in Directors' Report in the section on 'Corporate Governance'.

#### **5-4 Company Secretary**

Every company having prescribed paid-up share capital (presently prescribed as Rs two crores w.e.f. 11-6-2002) must appoint a whole-time Secretary. [section 383A(1)].

Where the appointment is compulsory based on paid-up share capital, the Secretary must be a member of the Institute of Company Secretaries of India [ICSI]. He should be wholetime Secretary. A person can be whole-time Secretary of only one company at a time.

Penalty for not appointing qualified Secretary is Rs 500 per day, payable by every officer who is in default. No penalty will be imposed if company proves that (a) It took all reasonable efforts to comply with the requirement of appointing a whole- time Secretary, but could not appoint one or (b) It is beyond the financial capacity of the company to engage a full time Secretary. [section 383(1A)].

Companies having less than prescribed capital for compulsory appointment of Secretary can also appoint a secretary. Such appointment is optional.

#### **6 Contracts in which directors are interested**

Since directors in nature of trustees of company, restrictions have been placed in

respect of contracts in which directors are interested.

**Restrictions on loans to directors** - There are prohibitions in granting loans or giving guarantees or providing security to directors directly or indirectly, without previous approval of Central Government. [section 295].

**Sanction of Board essential when director is interested in a contract** - If a director is interested in a particular contract, the contract cannot be entered into unless it is approved in the meeting of Board of Directors. [section 297].

This provision is applicable when the contract is with \* Director \* Relative of Director \* Firm in which the director or his relative is partner \* Any other partner in the firm in which the director is partner \* Any private company of which the director is a member or director. Thus, if the company is entering into contract with another public limited company this section is not applicable ! {good and useful loophole}. The consent must be obtained in the Board meeting and not otherwise. i.e. circular resolution is not permissible to approve the contract or arrangement. [section 297(4)].

The section is not applicable in following situations - (a) Purchase or sale of goods and materials for cash at prevailing market prices or (b) Purchase of goods when such director/his relative/firm/partner/private company regularly deals or trades in that product, provided that the value of goods or services is Rs 5,000 or less than Rs 5,000 or (c) In the case of transaction of any banking or insurance company in the ordinary course of business. [section 297(2)].

If the contract is for more than Rs 5,000 in a year, it is enough if contract is entered into in case of urgent necessity and consent of Board is obtained within 3 months. [section 297(3)].

However, if such consent is not accorded by Board within 3 months, anything done in pursuance of contract is voidable at the option of the Board. [section 297(5)]. Thus, the contract is valid till it is voided by the Board.

**Non-applicability of section 297** – Section 297 is applicable when the contract is (a) for sale, purchase or supply of any goods, material or services or (b) for underwriting the subscription of any shares or debentures to be issued by the company. Thus, section 297 is not applicable for contracts other than these contracts, e.g. section 297 is not applicable to following contracts -

- ✓ Giving or taking loans
- ✓ Contract in respect of immovable property (as it is not 'goods') – DCA letter No. 9/41/90-CL-X dated 27-3-1990.
- ✓ Contract between two public companies.
- ✓ Contracts between A Ltd. and B Pvt. Ltd. where directors of A Ltd. are not members or directors of B Pvt. Ltd. , but only relatives of directors of A Ltd. are members/directors of B Pvt. Ltd.

- ✓ Hiring of office premises on rent as the transaction is in immovable property - Department clarification dated 10.9.1990 - CS October, 1990 page 877.
- ✓ Contract for professional services [As per DCA circular No. 8/11/75-CL-V dated 5-6-1975 (No. 13 of 75), services of advocates and solicitors are obtained on basis of professional expertise and not on tender basis. Such services cannot be bracketed with supply of goods and materials. - - This principle should equally apply to professional services like accounting, management, taxation, valuation etc., if provided by qualified professionals]
- ✓ Employment of MD/WD, since supply of service s not the same as 'rendering of personal service' [DCA circular No. 8/11/75-CL-V dated 5-6-1975 (No. 13 of 75)].
- ✓ Contract for employment of relative of director [see note below]

***Contract for employment is not contract for services*** – There is distinction between 'contract of service' and 'contract for service'. The employment is 'contract of service' and hence not covered u/s 297. However, provisions of section 299 and 314 will apply.

***Previous approval of Central government if paid up capital exceeds Rs one crore*** - If the paid up capital of company is Rs one crore or more, ***previous approval*** of Central Government is necessary. [proviso to section 297(1)]. The powers have been delegated to Regional Director. Application should be made electronically in e-form 24A.

## **6-1 Disclosure of interest in contract or arrangement**

A director must disclose his interest or concern in any contract or arrangement or any proposed contract or arrangement by or on behalf of the company. Such interest should be disclosed to Board of Directors. [section 299(1)]. If the contract or arrangement is between companies, i.e. the company in which the person is director and the other company, the director is deemed to be interested in the contract only if he singly, or along with other directors, hold 2% or more shares in other company. [section 299(6)]. While calculating the 2% shares in other company, only investment of directors is considered. Investment of his relatives is not to be considered.

If the director is a partner in any firm, the provisions in respect of interest apply irrespective of the investment of the director in the firm or the ratio of profit in such partnership firm, i.e. even if his share of profit is less than 2% in partnership firm, or his investment is less than 2% in the firm, he is regarded as interested in the contract with that partnership firm.

## **6-2 Restrictions on holding office of profit by director or his relative / partner etc**

Section 314 provides for restrictions on holding office or place of profit by director or his relative or firm in which he is partner etc. Provisions of sections 297 and 299 (in respect of disclosure of interest, etc. will also have to be complied with.

**Approval in general meeting to appoint director to hold place of profit** - A director cannot hold office of profit in the company without approval in general meeting by a special resolution, irrespective of the quantum of remuneration drawn.

**Approval in general meeting in certain cases** - Following persons cannot hold office of profit in the company without approval in general meeting by a special resolution, if the total monthly remuneration is Rs 10,000 or more - # Director [The lower ceiling of Rs 10,000 does not apply to director. Thus, a director cannot hold office of profit, irrespective of remuneration drawn by him] # Partner or relative of *such* director # Firm in which such director or his relative is a partner # Private company in which the director is a director or member # Director or manager of such private company (i.e. director or manager of the private company in which the director of company is a member or director). [section 314(1)(b)]. [The provision does not apply if the person is director in a public limited company. Thus, the section can be overcome by the director forming a limited company instead of a private limited company. For example, 'X' is director of company 'A'. He is also director in company 'B'. Now, if 'B' is a private company, that private company cannot hold office or place of profit in A company. However, if 'B' is a public company, the 'B' company can hold office or place of profit in the 'A' company. Good loophole !]

**Provision applies only in cases where director himself is holding place of profit** - In *AR Sundaram v. The Madras Purasawal Kam Hindu Nidhi Ltd.* (1987) Comp LJ 402 = 57 Comp Cas 776 (Mad), it was held that section 314(1) applies only to a partner or relative of a director who is holding some office of profit, in view of the term used '*such* director' in section 314(1)(b). In other words, restriction of section 314 in respect of appointment of partner or relative apply only when the director himself is holding office of profit. Thus, section 314(1) does not apply where relative, partner etc. of an ordinary sitting director (i.e. director who does not hold office of profit) holds an office or place of profit in the company.

Since post of MD/WD is not considered a 'place of profit', this section should not apply where relative or partner of MD/WD is to be appointed.

Further, if remuneration is Rs 20,000 or more, special resolution and approval of Central Government will be required u/s 314(1B).

**Restriction does not apply if person was already employed** - The restriction is not applicable if the relative of director or firm in which such relative is a partner, holds office of profit before the director becomes director of the company. [section 314(1A)].

**Restrictions apply to appointment in subsidiary company also** - The restrictions are applicable in respect of office of profit held in the company or in its subsidiary company.

**Provision does not apply to appointment of MD, WD, manager, banker or**

**trustee** - The restrictions do not apply to appointment of managing director, manager, banker or trustee for the holders of debentures of the company, either under the company or under subsidiary of such company. [section 314(1)].

**Provision does not apply to appointment of wholetime director** - The section does not make specific provision in respect of appointment of relative/partner of director as a whole-time director (WD). However, department has clarified that section 314(1) only precludes a director to hold office or place of profit other than a 'director'. The restriction u/s 314(3)(a) is not applicable to remuneration drawn by a person as director. Hence, the restrictions u/s 314 *do not* apply to appointment of whole-time director. - circular No. 4/76 dated 11-2-1976. Department, vide further letter dated 29-5-1989 to Thane Manufacturers' Association, has confirmed that section 314(1) does not apply for appointment of relative of a director as a whole time director.

**No restriction in appointing director as solicitor or advocate** - Provisions of section 314(1B) do not apply for appointment of solicitors and advocates, as the advocate or solicitor appears before Court as an officer of court in pleading cause of justice. Receiving fees on this account cannot lead to an inference of an office or place of profit u/s 314. However, if such solicitor/advocate is appointed on a regular basis for rendering legal advice other than appearance in Courts, provisions of section 314 will be applicable. – DCA circular No. 14/75 dated 5-6-1975.

**Not applicable to director appointed by Central Government u/s 408** - Provisions of section 314 are not applicable if a person who is holding office of profit in the company, is appointed as director by Central Government under section 408.

**Central Govt. approval if remuneration is above prescribed limits** - If the remuneration is not less than the sum prescribed, prior consent of members by a special resolution and approval of Central Government is necessary. [section 314(1B)]. The sum prescribed is Rs 20,000, vide rule 10C(2) of Companies (Central Government) General Rules & Forms.

This provision applies to following –

- o Partner or relative of a director or manager
- o Firm in which such director or manager, or relative of either, is a partner
- o Private company of which such a director or manager, or relative of either, is a director or member.

**Procedure for obtaining approval** - Application for his appointment should be made in Form No 24B. Since the term used is 'approval' and not 'prior approval', it can be argued that application for approval to Central Government can be made even after appointment.

**Special procedure if monthly remuneration exceeds Rs 50,000** – Special

procedure has been prescribed vide Director's Relatives (Office or Place of Profit) Rules, 2003. The procedure applies if monthly remuneration exceeds Rs 50,000.

**Is Government approval required if remuneration is between Rs 20,000 to Rs 50,000?** – Section 314(1B) read with rule 10C(2) requires approval of Central Government if remuneration is Rs 20,000 or more, while Director's Relatives (Office or Place of Profit) Rules, 2003 prescribes procedure only when remuneration exceeds Rs 50,000. The question is whether Government approval is required when remuneration is between Rs 20,000 to Rs 50,000. It can be argued that the limit of Rs 20,000 [prescribed in Rule 10C(2)] has been impliedly repealed by 2003 Rules and approval of Central Government is not required. Another interpretation is that approval is required, but the special procedure prescribed in Director's Relatives (Office or Place of Profit) Rules, 2003 is not to be followed when remuneration is between Rs 20,000 to Rs 50,000. The later view is a safe view and I would support that view. In any case, special resolution will have to be passed u/s 314(1), but that can be done at first AGM after appointment, while section 314(1B) requires *prior* consent in general meeting.

## 7 Annual Accounts and Annual General Meeting

Every company must keep proper books of account on accrual basis as per Accounting Standards. Every company is required to prepare a balance sheet at the end of 'financial year' and profit and loss account for the period of 'financial year'. In case of company not carrying on business for profit, it will prepare 'Income & Expenditure Account' instead of 'Profit & Loss' account. The duly audited annual accounts should be presented at the annual general meeting (AGM) of members. [section 210(1)]. Annual accounts should be accompanied by report of Board of Directors.

The annual accounts must be presented within 6 months from close of 'financial year'. This period can be extended by further 3 months (i.e. total 9 months) by Registrar of Companies.

**Requirements and presentation of accounts** - The balance sheet and P&L account has to be prepared as per requirements in Schedule VI to Companies Act. [given later]. The details required may be given in the form of notes.

**Financial Year** - A 'financial year' of a company can be less or more than 12 months, but the 'financial year' cannot be for more than 15 months. The 'financial year' can be extended to 18 months by obtaining special permission from Registrar of Companies. [section 210]. Application for extending the period of annual accounts upto 18 months should be submitted electronically in e-form No. 61.

Income Tax Act requires that all companies must submit their income-tax returns on the basis of 'Uniform Financial Year' closing on 31st March every year. All companies have to prepare their accounts for income tax purposes on 31st March

every year. Hence, now most of the companies close their accounting year on 31st March, both for income-tax purposes as well as for Companies Act purposes. This avoids duplication of work. Hence, last date of holding AGM is usually 30th September. **4 Authentication of the balance sheet & P&L account** - Every balance sheet and P&L account of the company shall be signed, on behalf of the Board, by Manager or Secretary and at least two directors of the company. One of the directors should be Managing Director if the company has one. [section 215(1)(ii)]. If there is only one director available in India, he can sign the account with a statement giving reasons why two directors have not signed the accounts. [section 215(2)].

### 7.1 Normal schedule of accounts and AGM

| Activity                                                                                                            | Target date |
|---------------------------------------------------------------------------------------------------------------------|-------------|
| Preparation of accounts and checking by auditors                                                                    | X-60        |
| Checking of accounts by auditors                                                                                    | X-35        |
| Board meeting for approval of accounts, approve Board report, declaration of dividend, fixing dates of book closure | X-30        |
| Information to stock exchange about accounts, book closure and proposed dividend                                    | X-30        |
| Printing of balance sheet, Board Report, Notice of AGM                                                              | X-25        |
| Posting of notice, annual accounts to members, stock exchange                                                       | X-23        |
| Inform stock exchange if bonus or dividend is proposed                                                              | X-7         |
| Notice of book closure – usually starts earlier and ends on date of AGM                                             | X-7         |
| Finalise speech of Chairman                                                                                         | X-3         |
| AGM ('X' is latest by 30th September if accounts closed on 31st March)                                              | X           |
| Inform stock exchange                                                                                               | X           |
| Transfer amount of dividend to separate account                                                                     | X+5         |
| Post Dividend Warrants                                                                                              | X+15        |
| Credit ECS accounts with dividend where facility is available                                                       | X+30        |
| Filing of special resolutions passed and Annual Accounts                                                            | X+30        |
| Filing of Secretarial Compliance Certificate (if applicable)                                                        | X+30        |
| Signing of minutes of AGM by Chairman                                                                               | X+30        |
| Filing Annual Return to ROC electronically with e-form 20B                                                          | X+60        |

### 7-2 Accounts as per Accounting Standards

Accounting Standards have been notified *vide* Companies (Accounting Standards) Rules, 2006 on 7-12-2006. AS1 to AS-7 and AS-9 to AS-29 have been notified. Earlier, Institute of Chartered Accountants of India (ICAI) had issued various accounting standards. All of these standards have been reproduced almost verbatim in the Rules notified by Central Government on 7-12-2006.

The standards are as follows -

|       |                                                                                                                                                                                                                                                                                                                                           |
|-------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| AS 1  | Disclosure of Accounting Policies – w.e.f. 1-4-1991 for companies and 1-4-1993 for others (Original was effective from November 1979)                                                                                                                                                                                                     |
| AS 2  | Valuation of Inventories [Revised w.e.f. 1.4.1999] (Original in June 1981)                                                                                                                                                                                                                                                                |
| AS-3  | Cash flow statement – It is made mandatory w.e.f. 1.4.2001 for listed companies and all other commercial enterprises whose turnover exceeds Rs 50 crores. [Though it is mandatory, it is not a 'specified accounting standard', as it is not with reference to P&L account or balance sheet].                                             |
| AS 4  | Contingencies and Events occurring after the Balance Sheet date – mandatory w.e.f. 1-4-1995. After coming into force of AS-29 w.e.f. 1-4-2004, paragraphs in AS-4 'contingencies and events occurring after balance sheet date' stand withdrawn. However, aspects of impairment of assets will continue (original November 1982).         |
| AS 5  | Net profit or loss for the period, Prior period and extraordinary items and changes in Accounting Policies – mandatory w.e.f. 1-4-1996 (Original November 1982)                                                                                                                                                                           |
| AS 6  | Depreciation Accounting – mandatory w.e.f. 1-4-1995 (Original November 1982)                                                                                                                                                                                                                                                              |
| AS 7  | Accounting for construction contracts - Revised - mandatory w.e.f. 1-4-2003] (Original December 1983)                                                                                                                                                                                                                                     |
| AS 8  | [now withdrawn as AS-26 has become mandatory – earlier it was Accounting for Research & Development]                                                                                                                                                                                                                                      |
| AS 9  | Revenue Recognition – mandatory w.e.f. 1-4-1991 for companies and 1-4-1993 for others                                                                                                                                                                                                                                                     |
| AS 10 | Accounting for Fixed Assets – mandatory w.e.f. 1-4-1991 for companies and 1-4-1993 for others                                                                                                                                                                                                                                             |
| AS 11 | Accounting for effects of changes in Foreign Exchange rates –Revised AS-11 will be mandatory from 1-4-2004 [Earlier was mandatory from 1-4-1995 to 31-3-2003] (Original June 1989) The standard does not apply to forward contracts taken to hedge foreign currency risks of a firm commitment or a highly probable forecast transaction. |
| AS 12 | Accounting for Government Grants and Disclosure of Government Assistance– mandatory w.e.f. 1-4-1994                                                                                                                                                                                                                                       |
| AS 13 | Accounting for Investments – mandatory w.e.f. 1-4-1995                                                                                                                                                                                                                                                                                    |
|       |                                                                                                                                                                                                                                                                                                                                           |

|       |                                                                                                                                                                                                                                                                                                                                                     |
|-------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| AS 14 | Accounting for Amalgamations – mandatory w.e.f. 1-4-1995 (limited revision in February 2004)                                                                                                                                                                                                                                                        |
| AS 15 | Accounting for retirement benefits in the financial statements of Employers – mandatory w.e.f. 1-4-1995                                                                                                                                                                                                                                             |
| AS 16 | Borrowing Costs - mandatory w.e.f. 1-4-2000.                                                                                                                                                                                                                                                                                                        |
| AS 17 | Segment reporting – The standard requires that information should cover at least 75% of total enterprise revenue in group business in different business and geographical segments. It is made mandatory w.e.f. 1.4.2001 for listed companies and all other commercial enterprises whose turnover exceeds Rs 50 crores (modified in November 2003). |
| AS-18 | Related Party Disclosures – It is mandatory w.e.f. 1.4.2001 to all listed companies and other enterprises whose turnover exceeds Rs 50 crores (modified in November 2003).                                                                                                                                                                          |
| AS-19 | Leases – mandatory in respect of all assets leased on or after 1-4-2001 (modified in November 2003).                                                                                                                                                                                                                                                |
| AS-20 | Earning Per Share (EPS) - mandatory w.e.f. 1.4.2001 (modified in November 2003, limited revision in Feb 2004).                                                                                                                                                                                                                                      |
| AS-21 | Consolidated Financial Statement – mandatory w.e.f. 1.4.2001. It is applicable only to those enterprises which want to present consolidated financial statement. [Note that under Company Law, presenting consolidated financial statement is not required. It can only be given voluntarily as additional information].                            |
| AS-22 | Accounting for deferred taxes – It is mandatory w.e.f. 1.4.2001. For non-corporate enterprises, it is mandatory w.e.f. 1-4-2006.                                                                                                                                                                                                                    |
| AS-23 | Accounting for investments in Associates in consolidated Financial Statements – It is mandatory in respect of accounting periods commencing on or after 1-4-2002. It is mandatory only if an enterprise presents consolidated financial statements.                                                                                                 |
| AS-24 | Discontinuing Operations – It is mandatory w.e.f. 1-4-2004 to all listed companies and other enterprises whose turnover exceeds Rs 50 crores and for other enterprises, it will be mandatory from 1-4-2005 (modified in November 2003).                                                                                                             |
| AS-25 | Interim Financial Reporting – applicable to any enterprise which is required or elects to present Interim Financial Report (IFR). It is mandatory for all accounting periods commencing on or after 1-4-2002 (limited revision in February 2004).                                                                                                   |
| AS-26 | Intangible Assets - mandatory and applies to all listed companies and other enterprises whose turnover exceeds Rs 50 crores in respect of accounting period commencing on or after 1-4-2003 and for other enterprises, for accounting period commencing on or after 1-4-2004. [After AS-26 becomes mandatory, AS-8 will be withdrawn].              |
| AS-27 | Financial reporting of interest in joint ventures. It is mandatory in respect                                                                                                                                                                                                                                                                       |

|       |                                                                                                                                                                                                                                                                                                             |
|-------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|       | of accounting period commencing on or after 1-4-2002 (limited revision in February 2004).                                                                                                                                                                                                                   |
| AS-28 | Impairment of Assets – effective from 1-4-2004 and applies to all listed companies and other enterprises whose turnover exceeds Rs 50 crores and for other enterprises, it is mandatory from 1-4-2005. In small enterprises, its applicability will be from 1-4-06 to 1-4-2008 (modified in November 2003). |
| AS-29 | Provisions, contingent liabilities and contingent assets, effective from 1-4-2004                                                                                                                                                                                                                           |

The effective dates indicated are as per ICAI announcements. Now, w.e.f. 7-12-2006 they have become mandatory as per Rules notified by Central Government. All the aforesaid standards are 'specified accounting standards', except AS-3 and AS-25, as these are not with reference to P&L account or balance sheet.

**Relaxations to small and medium sized companies** – SMC means a company \* which is not listed \* which is not a bank, FI or an insurance company \* turnover (excluding other income) is less than Rs 50 crores in preceding accounting year \* Borrowings (including public deposits) do not exceed Rs 10 crores \* Which is not holding or subsidiary of a large company. In case of small and medium sized enterprises, AS-3, AS-17, AS-18 and AS-24 will not apply. Relaxations from some clauses of AS-19, AS-20 and AS-29 have been given.

If SMC does not disclose certain information pursuant to relaxation or exemption, this should be disclosed by way of a note. However, it can voluntarily comply with some of the standards even where relaxation/exemption is available.

### 7-3 Audit of accounts by auditor

A person who is a Chartered Accountant within the meaning of Chartered Accountants Act can only be appointed as an auditor. A firm of Chartered Accountants can be appointed as auditors, but all partners of the firm must be Chartered Accountants. The Chartered Accountant must hold a 'Certificate of Practice' issued by Institute of Chartered Accountants of India. [section 226(1)].

An auditor is appointed at the annual general meeting. He holds office from conclusion of that meeting till the conclusion of next annual general meeting. After his appointment, company must inform him of his appointment within seven days. [section 224(1)]. The auditor, in turn, should inform in writing to the Registrar of Companies within 30 days from receipt of intimation from the company, whether he has accepted or refused to accept the appointment. [section 224(1A)]. Appointment of auditor for more than one financial year at a time is not permissible, though same person can be re-appointed.

**Disqualifications of Auditors** - Following person/s cannot be appointed as Auditor/s, even if he/they are chartered accountants –

- o A body corporate [section 226(3)(a)].
- o An officer or employee of the company [section 226(3)(b)].
- o A person who is in employment of an officer or employee of the company [section 226(3)(c)].
- o A person who is a partner of an officer or employee of the company [section 226(3)(c)].
- o A person who is indebted to company for more than Rs 1,000 [section 226(3)(d)].
- o A person who has given any guarantee or security in connection with indebtedness of any third person to the company for amount exceeding Rs 1,000. [section 226(3)(d)].
- o A person who holds any security of the company, which carries voting rights. [Thus, holding of security which does not carry any voting right is not a disqualification. Further, there is no restriction if security is held in name of wife or other relative]. [section 226(3)(e)].
- o If a person is disqualified to be auditor under any of the aforesaid clause, he will also be disqualified to be auditor of subsidiary or holding company of that company or subsidiary of that company's holding company. [section 226(4)]
- o An auditor has restrictions on number of audits he can accept. He cannot accept audits beyond prescribed limit on number of audits. [section 224(1B)]

If a person becomes disqualified after his appointment, he shall be deemed to have vacated his office. [section 226(5)].

As per Chartered Accountants Act, a member is disqualified if (a) he ceases to be a member of the Institute (b) His certificate of practice is cancelled (c) He is adjudged as having unsound mind (d) He is un-discharged insolvent.

**Limit on number of audits** - Limit on number of audits is 20 companies per Chartered Accountant, out of which only 10 companies can be having share capital of Rs 25 lakhs or more. In other words, an Auditor can audit maximum 10 companies which are having paid up share capital of Rs 25 lakhs or more and remaining companies may have paid up capital less than Rs 25 lakhs. [Explanation I to section 224]. The restriction does not apply to a private company. [Fourth proviso to section 224(1B)]. As per ICAI notification dated 8.5.2001, a Chartered Accountant can accept maximum 30 audit assignments including audits of private companies.

## 7-4 Requirements of Report of Board

The Annual Accounts of company must be accompanied by a report of Board of Directors. The report of Board of Directors shall be in respect of following -

| Section No.     | Details                                                                                                                                                                                                                         |
|-----------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 212(3)          | Statement of holding Company's interest in the subsidiary – It may be given separately or as part of Directors' Report                                                                                                          |
| 217(1)(a)       | State of the company's affairs                                                                                                                                                                                                  |
| 217(1)(b)       | Amount proposed to be carried to any reserves in the balance sheet i.e. appropriation of profits to reserve.                                                                                                                    |
| 217(1)(c)       | Amount recommended to be paid to share holders as dividend.                                                                                                                                                                     |
| 217(1)(d)       | Material changes and comments, if any, affecting the financial position of the company occurred after the close of financial year and the date of report of Board of Directors [called 'events after balance sheet'].           |
| 217(1)(e)       | Conservation of energy, technology absorption, foreign exchange earnings and outgo. These details should be submitted in prescribed form.                                                                                       |
| 217(2)          | Changes during financial year.                                                                                                                                                                                                  |
| 217(2A)         | Statement giving details of employees whose salaries are beyond prescribed limit – presently Rs 2 lakhs per month or Rs 24 lakhs per annum.                                                                                     |
| 217(3)          | Fullest information and explanations about every reservation, qualification or adverse remarks in the auditors' report.                                                                                                         |
| 217(2B)         | If company had entered into 'buy back' of shares as per approval of members, and if buy-back was not completed within specified time, Board should specify reasons for the failure. [section 77A]                               |
| 217(2AA)        | Directors' Responsibility Statement.                                                                                                                                                                                            |
| 292A            | Reasons for not accepting report of Audit Committee formed u/s 292A (If applicable)                                                                                                                                             |
| 292A(4)         | Composition of Audit Committee – It may be given separately or as part of Directors' Report or as part of Corporate Governance Report                                                                                           |
| 383A(1) proviso | Secretarial Compliance Certificate (if applicable) should be attached to the report of Board.                                                                                                                                   |
|                 | Number of meetings of Board and Committees held during the year and meetings attended by each director [This is suggested as per Secretarial Standard (SS-1) of ICSI. The standard is presently only recommendatory in nature]. |

|      |                                                                                                  |
|------|--------------------------------------------------------------------------------------------------|
| SEBI | Details of sweat equity shares issued, ESOP and ESPS                                             |
| SEBI | Requirements as per stock exchange agreement in case of listed companies, as per SEBI guidelines |

**Signing of report of Board of Directors** - Report of Board of Directors has to be approved in the meeting of Board. The Board can authorise any director to sign the report on its behalf. Usually, Chairman of the company or Chairman of the meeting or Managing Director is authorised to sign the report of Board of Directors.

### 7-5 Details in Board report as required under listing agreement

Listing agreement requires following disclosures/information in annual accounts. This obviously applies only to listed companies.

**Compliance Report on Corporate Governance** - Detailed compliance report on corporate governance should be given [clause 49VI(i) of Listing Agreement]. Non-compliance of any mandatory requirement with reasons and extent of deviation should be specifically highlighted - - In addition to disclosures as specified in clause 49 of Listing Agreement, disclosures should be made in Directors' Report in the section on 'Corporate Governance', if company intends to pay minimum remuneration to the managerial personnel in case of inadequacy of profits [See Part II, Section II of Schedule XIII to Companies Act]

**Compliance certificate regarding corporate governance** - Compliance Certificate from auditors/practising company secretary regarding compliance of conditions of Corporate Governance. This certificate should be annexed to Directors' Report [clause 49VII(1) of Listing Agreement]

**Disclosure of remuneration to non-executive directors** - Disclosure of remuneration to non-executive directors and pecuniary relationships or transactions with company, as required in clause 49(IVE) of listing agreement.

**Management discussion and analysis** - Management discussion and analysis report as required in clause 49(IVF) of listing agreement.

**Affirmation about compliance to code of conduct** - Declaration by CEO in Annual Report that Board Members and senior management have affirmed their compliance to Code of Conduct laid down by Board [clause 49I(D) of Listing Agreement].

**Deviations in projected utilisation and actual utilisation of funds** - If company had raised funds by issue of prospectus, the director's report should explain deviations in projected utilisation of funds and actual utilisation [clause 43 of Listing Agreement].

**Cash flow statement** - A cash flow statement along with balance sheet is to be given by listed companies. The cash flow statement will be prepared as per ICAI

accounting standard AS-3, under indirect method as given in AS-3. - - Consolidated financial statements shall be published in the annual report in addition to the individual financial statements. These will have to be audited by statutory auditors and filed with stock exchange. Disclosures as per 'Related Party Disclosures' Accounting standard shall be made in Annual Report. It also has to make disclosure about loans/advances and investments in its own shares by subsidiaries, associates etc. Both parent and subsidiary company has to make the disclosure [Clause 32 of Listing Agreement].

**Deviations from accounting standards** - If company has deviated from accounting standards, reasons for same and justification why alternate treatment is more representative for true and fair view of underlying business transaction [clause 49(IVB) of Listing Agreement].

**Details of ESOS/ESPS** - If company has implemented Employees Stock Option Scheme (ESOS) or Employees Stock Purchase Scheme (ESPS), details about the same should be given as given in SEBI (Employee Stock Option Scheme and Employee Stock Purchase Scheme) Guidelines, 1999.

**Details if name was changed** - If company has changed name suggesting new line of business (including software business), turnover and income from such activity shall be disclosed separately in annual results.

**Details if issue of security was made** - If company has made issue of security, company in its balance sheet should give details of utilisation of money received under promoters' contribution and from allotments and reservations, indicating purpose for which it is utilised. If funds were unutilised, form in which it has been invested should be disclosed [para 6.5.7.2 of SEBI(DTP) Guidelines, 2000 [The details may be given in Corporate Governance Section or in Cash Flow Statement]

## 7-6 Cost Records and Cost Audit

Section 209(1)(d) makes it compulsory for certain class of companies specified by Central Government, engaged in production, manufacturing or mining activity to maintain cost records pertaining to utilisation of material and labour and other items of cost. Under these powers, Central Government has issued Cost Accounting Record Rules for maintenance of cost records, in respect of various types of industries. 41 industries for which Cost Accounting Record Rules have been prescribed are –

(1) Aluminium (2) Batteries other than dry cell batteries (3) Bearings (4) Bulk drugs (5) Cement (6) Chemical Industry ( 44 specified chemicals) (7) Cosmetics and toiletries (8) Cycles (9) Dry battery cell (10) Dyes

(11) Electric cables and conductors (12) Electric lamps # Electric fans # Electric motors (13) Electric Industry (14) Electronic Products (Consumer Electronics,

Industrial Electronics, Computers and peripherals, communication and broadcasting equipment etc.) (15) Engineering industries (namely power driven pumps and diesel pumps, automotive parts and accessories, electric generator, power transformers, machine tools, IC engines etc.) (16) Fertilizers (17) Footwear (18) Formulations (All formulations under any system of medicine) (19) Industrial Alcohol (20) Industrial gases

(21) Insecticide (22) Jute goods (23) Milk Food (24) Mining and metallurgy – 14 metals and non-metals, ores and alloys are covered (25) Motor Vehicles (including tractors and heavy earth moving equipment) (26) Nylon (27) Paper (28) Petroleum Industry (29) Plantation (tea, coffee and other commercial plantation) (30) Rayon

(31) Refrigerators (32) Room air conditioners (33) Rubber tyres and tubes (34) Shaving systems (35) Soaps & detergents (36) Steel Plant – Production, processing or manufacture of steel and allied products (37) Steel tubes and pipes (38) Sugar (39) Telecommunication Industry (40) Textiles (cotton / art silk / rayon / wool - yarn / cloth) (41) Vanaspati

Cost audit of cost records of companies is to be conducted if order is issued by Central Government u/s 233B.

Small Scale Industries as defined under IDR Act and Companies whose aggregate value of turnover of company of all its products is less than Rs 10 crores - are exempt from provision of compulsory maintenance of cost records.

## **8 Some special types of companies**

A company be public or private. A public company can be listed or unlisted. Company incorporated abroad is 'foreign company'. Companies Act also makes special provisions for Government companies and nidhi companies. A 'producer company' which is substitute for Multi-State Cooperative Society can also be formed.

### **8-1 Private company**

A private company is generally considered as a 'glorified partnership', formed as a company, mainly to get benefit of 'limited liability' and easy transferability of interests in the company. It has limited restrictions, regulations and controls compared to a public company. It is a blend of partnership and a limited liability body corporate. It enjoys advantages and benefits of both, i.e. it maintains close control within a small group, and at the same time enjoys the advantage of corporate entity and limited liability. Distinctions between private company and public company are given below.

| Section No.               | Private Company                                                                                                | Public company                                                                                                                       |
|---------------------------|----------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------|
|                           |                                                                                                                |                                                                                                                                      |
| 3(1)((iii)(a)             | Must restrict transfer of shares and can refuse transfer as provided in Articles                               | Cannot restrict transfer of shares. It can refuse transfer only when it is against any law e.g. Companies Act, SEBI, FEMA, SICA etc. |
| 3(1)(iii) and 3(1)(iv)(b) | Minimum paid up capital of Rs one lakh                                                                         | Minimum Paid up capital Rs five lakhs                                                                                                |
| 3(1)(iii)(c)              | Cannot invite public to subscribe for shares or debentures                                                     | Can invite public to subscribe for shares or debentures                                                                              |
| 3(1)(iii)(d)              | Can accept deposit only from members, directors or their relatives                                             | Can accept public deposits subject to restrictions u/s 58A                                                                           |
| 3(1)(iv)(c)               | It cannot be subsidiary of a public company, as in such case, it will become a public company u/s 3(1)(iv)(c)] | It can be subsidiary of another public/private company                                                                               |
| 12(1)                     | Minimum 2 members, maximum 50.                                                                                 | Minimum 7 members, no limit on maximum members                                                                                       |
| 13(1)(a)                  | Should contain words 'Private Limited' at the end of its name                                                  | Should contain words 'Public Limited' at the end of its name                                                                         |
| 69(1)                     | Restrictions in respect of minimum subscription for allotment do not apply                                     | Restrictions in respect of minimum subscription for allotment apply in case of first public issue                                    |
| 70(3)                     | Statement in lieu of prospectus not required even for first issue                                              | Statement in lieu of prospectus required for first issue after incorporation                                                         |
| 77(2)                     | Financial assistance can be given for purchase or subscribing for shares of company or its holding company.    | Financial assistance cannot be given for purchase or subscribing for shares of company or its holding company.                       |
| 81(3)                     | Further issues are not                                                                                         | Further issues should be rights issues to                                                                                            |

|                |                                                                                                                           |                                                                                                                                               |
|----------------|---------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------|
|                | required to be right issues to existing shareholders                                                                      | existing shareholders, unless special resolution is passed                                                                                    |
| 90             | Can issue any type of shares having varying and disproportionate rights in respect of voting/dividend                     | Can issue only equity and preference shares and shares with differential rights                                                               |
| 111(3)         | Can restrict transfer of shares                                                                                           | Shares freely transferable u/s 111A except when against any law.                                                                              |
| 149(7)         | Does not require certificate to commence business after incorporation                                                     | Requires certificate to commence business after incorporation                                                                                 |
| 165(10)        | Statutory meeting and statutory report is not required                                                                    | Statutory meeting and statutory report is mandatory                                                                                           |
| 170(1)         | Articles can provide for meeting of AGM with short notice and that explanatory statement need not be attached to notice   | Articles cannot provide for meeting of AGM with short notice. Explanatory statement must be attached to notice and no relaxation can be given |
| 174(1)         | Quorum of two members personally present at general meeting is sufficient                                                 | Quorum of five members personally present at general meeting is required                                                                      |
| 192A           | Postal ballot is never required                                                                                           | Listed company has to pass certain resolutions only by postal ballot                                                                          |
| 204(6)         | A firm or body corporate can be appointed to an office or place of profit under the company                               | A firm or body corporate cannot be appointed to an office or place of profit under the company                                                |
| 220(1) proviso | Balance sheet can be inspected by any person but only member can inspect P&L account of company in office of ROC u/s 610. | Both Balance Sheet and P&L is a public document and can be inspected at office of ROC u/s 610.                                                |
| 252(2)         | Minimum 2 directors                                                                                                       | Minimum 3 directors                                                                                                                           |
| 255 and 256    | Directors not required to retire by rotation.                                                                             | At list two-third directors have to retire by rotation.                                                                                       |

|                    |                                                                                                                                                                 |                                                                                                                                                                                                  |
|--------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                    | Notice not required for standing for election.                                                                                                                  | Notice not required for standing for election.                                                                                                                                                   |
| 263(1)             | All directors can be appointed by single resolution.                                                                                                            | Each director should be appointed by individual resolution.                                                                                                                                      |
| 264(3)             | Filing of consent to act as director with ROC not required.                                                                                                     | Filing of consent to act as director with ROC is required.                                                                                                                                       |
| 266                | Restrictions on appointment or advertisement as director without filing his consent not applicable.                                                             | Restrictions on appointment or advertisement as director without filing his consent with ROC applicable                                                                                          |
| 269, 309, 310, 311 | No restriction on managerial remuneration                                                                                                                       | There are restriction on managerial remuneration                                                                                                                                                 |
| 273                | Qualification shares not required                                                                                                                               | Provisions relating to qualification shares apply, if Articles provide.                                                                                                                          |
| 274(1)(g)          | Director not disqualified even if company does not file annual accounts or annual report for three years or fails to repay deposit or its interest on due date. | Director are disqualified if company does not file annual accounts or annual report for three years or fails to repay deposit or its interest on due date.                                       |
| 274(3) and 283     | Additional grounds for disqualification or vacation of office of director can be provided in Articles.                                                          | Additional grounds for disqualification or vacation of office of director cannot be provided in Articles                                                                                         |
| 278                | Directorships in private company is not counted for the limit of 15 directorships                                                                               | A person cannot be director in more than 15 public limited companies.                                                                                                                            |
| 292A               | Audit committee is not required                                                                                                                                 | Audit committee required if paid up capital Rs five crore or more.                                                                                                                               |
| 293                | No restrictions on power of Board regarding selling, leasing, remitting or giving time for                                                                      | Restrictions apply on power of Board regarding selling, leasing, remitting or giving time for payments of debts, investing or borrowing moneys, donations to charities or political parties etc. |

|                      |                                                                                                    |                                                                                                                                        |
|----------------------|----------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------|
|                      | payments of debts, investing or borrowing moneys, donations to charities or political parties etc. |                                                                                                                                        |
| 295(2)               | No restrictions on loans to directors.                                                             | Restrictions on loans to directors without approval of Government.                                                                     |
| 300(2)               | Interested director can vote in Board meeting.                                                     | Interested director cannot vote in Board meeting.                                                                                      |
| 303(1)               | Date of birth need not be entered in register of directors                                         | Date of birth is required to be entered in register of directors                                                                       |
| 316(1), 386 and 388A | Restrictions on number of companies to which a person can be appointed as MD/Manager do not apply. | A person cannot be appointed as MD/Manager of more than two companies without approval of Central Government                           |
| 317(4)               | MD can be appointed for more than five years at a time.                                            | MD cannot be appointed for more than five years at a time.                                                                             |
| 349, 350 and 355     | Provisions relating to determination of net profits and depreciation not applicable.               | Net profits and depreciation is required to be ascertained as per the provisions (for purpose of determining managerial remuneration). |
| 372A(8)              | No restrictions on investments, inter-corporate loans and guarantees by company                    | Investment, inter-corporate loans and guarantees by public company should be as per restrictions u/s 372A                              |
| 409(3)               | CLB cannot exercise its powers to prevent change in Board of Directors                             | CLB can exercise its powers to prevent change in Board of Directors which is likely to affect company prejudicially.                   |
| 416(1)               | Person can enter into contract on behalf of company as undisclosed Principal                       | Person can enter into contract on behalf of company as undisclosed Principal without informing company and Board of Directors.         |
| Tax Liability        | Directors of private company have personal liability in respect of Central Sales Tax when          | Directors of public company have personal liability in respect of income tax and Central Sales Tax liability of company.               |

|                   |                                                                                                         |                                                                                                          |
|-------------------|---------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------|
|                   | company is under liquidation and also in respect of income tax if tax cannot be recovered from company. |                                                                                                          |
| SEBI              | Corporate Governance report is not required with report of Board of Directors                           | Listed public companies have to give Corporate Governance Report as part of report of Board of Directors |
| Quasi Partnership | Often treated as glorified partnership in proceedings of oppression and mismanagement                   | Generally, partnership principles are not applied in proceedings of oppression and mismanagement         |

**Private company which is subsidiary of public company is public company** - In view of various privileges, many public companies started subsidiary companies as private companies. Hence, many concessions, which were available to a private company are not available to a private company which is a subsidiary of a public company. As per section 3(1)(iv)(c), amended w.e.f. 13-12-2000, a private company which is subsidiary of a company which is not a 'private company' will be 'public company'. Thus, only subsidiary of a private company can be a 'private company'. Putting it differently, a private company which is subsidiary of a public company is a public company. Thus, it will have no privileges as are available to private company.

Note that registration of a subsidiary as a 'private company' is not prohibited under the Act and it is nowhere provided that a subsidiary of a public company must convert into a public company. Thus, a private company which is subsidiary of a public company can continue as a private company.

## 8-2 Holding and subsidiary companies

A company is deemed to be subsidiary of another company if **(a)** The other company controls composition of its Board of Directors or **(b)** The other company holds more than 50% nominal value of its equity capital or **(c)** The first-mentioned company is a subsidiary of any company which is that other's subsidiary e.g. if company B is subsidiary of company A and company C is subsidiary of company B, then company C is also subsidiary of A. [section 4(1)]. These are only three tests relevant. There should be direct 'one to one' relationship.

A private company which is subsidiary of a public company is a public company. It loses many benefits which are available to a private company

## 8-3 Section 25 Company (Licensed Company)

Chambers of Commerce, Trade Associations, Clubs, Charitable Organisations etc. can be registered as 'companies'. However, they are not formed for making profits. Such companies can obtain a licence from Central Government to register the company without the name 'Limited' or 'Private Limited' in its words.

If such a company has already been registered, licence can be obtained to remove the word 'Limited' or 'Private Limited' from its name. A company proposed to be formed u/s 25 has to submit application to Regional Director. Such companies are called as licensed companies or 'section 25 companies' [section 25(1)].

Procedure for obtaining license has been prescribed in regulations 3 to 6 and 10 to 14 of Companies Regulations, 1956. The Annexure I of Regulations give model form of Memorandum. Powers for issuing the licence have been delegated to Regional Directors.

Application for license should be submitted electronically in e-form No. 24A.

Various procedural concessions have been given to such companies, vide Notification No. SO 1578 dated 1.7.1961.

#### 8-4 Government companies

Section 2(18) states that 'Government Company' means a Government company within the meaning of section 617 of Companies Act. As per section 617, Government company means a company in which 51% or more paid up capital is held by Central Government, State Government/s or partly by Central and partly by State Governments. A subsidiary of a Government company is also a Government Company. The 'paid up capital' may be equity or preference shares. Government company is not 'Government', but it is 'State' under Article 12 of Constitution.

Central Government can modify any provision of Companies Act in respect of Government companies, by issuing a gazette notification. Such notification should be placed before Parliament for 30 days [section 620]. Under these powers, Government companies have been exempted from many provisions of Companies Act. Important exemptions are as follows -

| Section No. | Details                                                                                                                                            |
|-------------|----------------------------------------------------------------------------------------------------------------------------------------------------|
| 13 and 23   | In the name clause of memorandum word 'Private' is not required, even if shareholders are less than 7                                              |
| 100 to 103  | Reduction of capital - Where Companies Act provides for consent of Court, the consent shall be obtained from Central Government and not from Court |
| 108         | Transfer of shares/debentures need not be accompanied by share/debenture certificate if these are held by nominee of Government.                   |

|            |                                                                                                                                                                                                                        |
|------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 149(2A)    | Special resolution for Commencement of business not required when entire paid-up capital is held by Central and/or State Government/s.                                                                                 |
| 165        | Statutory meeting need not be held.                                                                                                                                                                                    |
| 166        | Time for AGM can be extended by Central Government and not by ROC                                                                                                                                                      |
| 166(2)     | AGM can be held at any place approved by Central Government and not necessarily at the registered office                                                                                                               |
| 187C       | Declaration of beneficial interest in shares need not be made                                                                                                                                                          |
| 198, 309   | Ceiling on managerial remuneration in respect of absence or inadequacy of profits is not applicable.                                                                                                                   |
| 205A       | Transfer of unpaid dividend to special dividend account need not be made.                                                                                                                                              |
| 209        | Accrual system of accounting not required if Government company is engaged in business of financing industrial projects or income from loans in respect of company engaged in promotion and development of industries. |
| 253-263    | Appointment of directors and retirement by rotation, increase in number of directors, etc., is not required, when entire paid-up share capital is held by Central Government of State Government or both.              |
| 264        | Filing consent of director with ROC is not necessary, , when entire paid-up share capital is held by Central Government of State Government or both.                                                                   |
| 269        | Appointment of Managing Director does not require Central Government approval                                                                                                                                          |
| 274        | Government company is exempt from provisions of section 274(1)(g) [These provisions are in respect of disqualification of directors of defaulting companies] – GSR 829(E) dated 21-10-2003.                            |
| 294, 294AA | Approval of Central Government for appointment of sole selling agents is not required                                                                                                                                  |
| 295(1)     | Loans to directors can be given with approval of concerned ministry                                                                                                                                                    |
| 297(1)     | Provisions in respect of contract with companies in which directors interested etc. are not applicable in respect of contracts with another Government company                                                         |
| 307-308    | Register of directors' share-holding need not be maintained when all shares are held by Government.                                                                                                                    |
| 309, 310   | Remuneration of directors and increase in their remuneration.                                                                                                                                                          |
| 316, 386   | Number of companies in which a person can be managing director or manager, if entire capital is held by Government, is                                                                                                 |

|            |                                                                                                                                       |
|------------|---------------------------------------------------------------------------------------------------------------------------------------|
|            | not restricted                                                                                                                        |
| 372A       | Loan/guarantees to companies under same management can be given. However, permission from administrative ministry should be obtained. |
| 387        | Appointment of Manager, appointment for more than 5 years, remuneration of Manager etc. is permissible.                               |
| 391 to 393 | For words 'Court', 'Central Government' shall be substituted.                                                                         |
| 621        | Only a person authorised by Central Government can file complaint and not a Registrar or shareholder of a company.                    |

## 9 Other important issues in company management

### 9-1 Charges that are required to be filed

The term 'Charge' is much wider than 'security'. Section 124 makes it clear that 'charge' includes a mortgage.

Following are the 'charges' as per section 125(4), which are required to be filed with ROC for registration—

- o Charge for the purpose of securing any issue of debentures
- o Charge on uncalled share capital of the company
- o Charge on immovable property, wherever situated, or any interest on the immovable property
- o Charge on book debts of a company (This will be usually a floating charge)
- o Charge on any movable property of the company, excluding a 'pledge'. [Pledge has been excluded, as in case of 'pledge' the movable property is in physical possession of the lender] (Usually, this is a floating charge). Charge is to be registered even if property is outside India and charge is created inside India or outside India, as made clear in sections 125(5) and 125(6).
- o A floating charge on the undertaking or any property of the company including stock-in-trade
- o A charge on calls made but not paid
- o Charge on a ship or any share in a ship
- o Charge on goodwill, patent or a licence under patent, trade mark, on copyright or a licence under a copyright
- o Charge includes mortgage
- o If property acquired is subject to charge, it is required to be registered, as clarified in section 127(1).

***Mortgage is also a 'charge' only for purpose of filing charge with ROC –***

Mortgage is 'charge', but this is only for purposes of filing and registration of charges under Companies Act. As per section 100 of Transfer of Property Act, 'charge' does not include 'mortgage').

***Codonation of delay in filing of charge or satisfaction of charge*** – Charge and satisfaction of charge is required to be filed within 30 days. However, delay in filing charges and satisfaction of charges upto 300 days is condonable by ROC on filing of additional fees. If delay is beyond 300 days, application should be made to CLB for rectification of Register of charges u/s 141 – MCA letter F No. 8/2/2007-CL-V Circular No. 13/2007 dated 27-9-2007, based on CLB order dated 1-8-2007.

**9-2 Public deposits**

A public company can invite deposits from public only if following requirements are fulfilled – (a) Deposits can be invited only as per Rules made (b) An advertisement giving financial position of company is published in prescribed manner and (c) The company is not in default in repayment of deposits and interest thereon [section 58A(2)].

The limits on acceptance of public deposits are as follows –

***Non Government public company*** - A non-Government public company can accept public deposits upto 25% of its paid up capital and free reserves. In addition, public deposits upto 10% of paid up capital and free reserves can be accepted (a) From shareholders of company and/or (b) Deposits guaranteed by director/s of a company [rule 3(2) of Companies (Acceptance of Deposits) Rules, 1975]. There are no restrictions on accepting deposits from director of the public company.

***Government company*** - A Government company [usually termed as public sector undertaking (PSU)] can accept public deposits upto 35% of its paid up capital and free reserves [rule 3(2A) of Companies (Acceptance of Deposits) Rules, 1975].

***Private company*** – A private company cannot accept public deposits at all [section 3(1)(iii)(d) of Companies Act]. It can accept deposits only from its members, directors and their relatives.

***Period for which deposit can be accepted*** - The deposit can be accepted for a period of minimum 6 months and maximum 36 months (Short term deposits of minimum 3 months are permitted upto 10% of paid up capital plus free reserves of the company). Public deposit payable on demand cannot be accepted.

***Maximum interest that can be paid on public deposits*** - Maximum interest that can be paid is same as that Non Banking Financial Companies (NBFC) can pay on public deposits as per RBI directions [presently, it is 11% compounded on monthly basis] - rule 3(1)(c) of Companies (Acceptance of Deposits) Rules, 1975.

### 9-3 Dividend

Dividend can be paid out of (a) Profits of current year after providing for depreciation (b) Un-distributed profits of previous year or years after providing for depreciation for previous years (c) Out of moneys provided by Central or State Government for payment of dividend in pursuance of guarantee given by that, if any. [section 205(1)]

**Minimum profits to be transferred to reserves** - A company must transfer certain percentage of profits of current year to reserves, before declaring a dividend. A company may transfer higher amount to reserves than prescribed. [section 205(2A)]. The prescribed percentage of profits to be transferred to general reserve as per rule 2 of Companies (Transfer of Profits to Reserves) Rules, 1975, is as follows -

- o If dividend proposed is upto 10% - Nil
- o If dividend proposed is 10.01% to 12.50% - 2.5% of current profits
- o If dividend proposed is 12.51% to 15.00% - 5% of current profits
- o If dividend proposed is 15.01% to 20.00% - 7.5% of current profits
- o If dividend proposed is over 20.00% - 10% of current profits

The transfer is required only in respect of profits of current year after providing for depreciation. Transfer in respect of profits of previous years is not required.

**Conditions for distributing dividend out of reserves** - If, in a particular year, profits are not adequate to declare a dividend, dividend can be declared out of reserves, as per Companies (Declaration of Dividend out of Reserves) Rules, 1975. The conditions prescribed are as follows -

- o Such dividend cannot be more than average of rates at which dividend was announced in previous five years, or 10%, whichever is less (i.e. maximum 10% dividend can be declared out of reserves, even if average dividend in previous five years was higher.
- o If company intends to pay dividend higher than 10%, prior approval of Central Government u/s 205A(3) will be required. Application for permission should be filed electronically in form prescribed in Companies (Declaration out of Reserves) Rules, 1975 [This is a separate e-form and not be submitted as attachment to e-form No. 65]
- o Total amount drawn from reserves shall not exceed an amount equal to one-tenth of the sum of its paid up capital and free reserves.
- o The amount drawn from reserves shall be first utilised to set off losses incurred in the current financial year and then, surplus, if any, can be utilised towards declaration of dividend on equity and preference shares
- o Balance in reserve account shall not fall below 15% of paid up capital of the company.

**No restriction on dividend from accumulated profits** - There are many restrictions in declaring dividend out of reserves. Hence, it is advisable to transfer only statutory minimum amount to reserves and keep the balance to credit in P&L account itself. There is no restriction in distributing dividend out of such un-distributed profit of previous years.

#### **9-4 Inspection of company documents by public**

All documents have to be filed with ROC. Thus, office of ROC is a office of records. Documents filed by a company with ROC are available for inspection as per rules prescribed. However, prospectus is available for inspection only for 14 days after the date of publication. [section 609]. The annual returns, balance sheets, charges registered by the company and other documents filed by company with ROC are available for inspection, on payment of fees of Rs 50/-. A separate folder for each company is maintained by ROC, which is available for public inspection - section 610(1)(a) read with rule 21A.

**Other fees payable** – Fees for inspection of documents at office of ROC is Rs 50/-. Fees for obtaining copy of certificate of incorporation is Rs 50/-. Fees for obtaining extract of other documents including hard copy of such documents on computer readable media is Rs 25/- per page. Fees are to be paid electronically through credit card or by special challan generated by computer when e-form is filed through MCA portal i.e. [www.mca.gov.in](http://www.mca.gov.in).

**Electronic Inspection of documents** – Regulation 31 (amended w.e.f. 14-9-2006) provides that inspection of documents registered or recorded or filed with ROC electronically or documents which have been scanned and digitized and which form part of electronic registry can be made only in electronic manner through payment of prescribed fees. After requisite fees are paid, document will be available for viewing for seven days for a maximum of three hours.

Central Government has scanned and digitized permanent documents of companies and annual return and balance sheets of companies for past two years and these form part of electronic depository [para 4(9) of Annexure 'A' of Scheme notified on 26-10-2006].

**Physical Inspection when document is not available electronically** - If the document does not form part of electronic registry, physical inspection will be permissible in presence of person authorised by ROC during office hours (Regulation 25). Fresh payment of fee is not required if proof of payment for electronic viewing is produced at office of ROC [para 4(10) of Annexure 'A' of Scheme notified on 26-10-2006].

**Obtaining certified copies** – Certified copy of documents can be obtained on payment of requisite fees. After inspection of documents, a user can ask mark specified pages and number of copies required as certified copies. He then has to

submit non-judicial stamp paper of prescribed value and court fee, as applicable in various States. Certified copies will be sent by post/courier under manual signature and seal of competent authority. If document is not available in electronic form, copy in manual form will be available [para 4(11) of Annexure 'A' of Scheme notified on 26-10-2006].

## 10 Administration of Companies Act

The work of company law is looked after by Ministry of Corporate Affairs (MCA), 5th floor, A wing, Shastri Bhavan, Dr. Rajendra Prasad Road, New Delhi 110 001. Tel - 23382324, 2338 4017, 23386110. Fax - 2338 2748 [ 'Ministry of Company Affairs' was renamed as 'Ministry of Company Affairs' on 9-5-2007. Prior to formation of Ministry of Company Affairs, work of Company Law was looked after by 'Department of Company Affairs' (DCA) under a Ministry]. Website is <http://mca.gov.in>.

### 10-1 Approvals of Central Government

The work of company law is looked after by Ministry of Corporate Affairs (MCA), 5th floor, A wing, Shastri Bhavan, Dr. Rajendra Prasad Road, New Delhi 110 001. Tel - 23382324, 2338 4017, 23386110. Fax - 2338 2748 [ 'Ministry of Company Affairs' was renamed as 'Ministry of Company Affairs' on 9-5-2007. Prior to formation of Ministry of Company Affairs, work of Company Law was looked after by 'Department of Company Affairs' (DCA) under a Ministry]. Website is <http://mca.gov.in>.

**Sanctions / permissions etc.** - Many sections of Companies Act provide for permission of Central Government. Some of these powers have been delegated to Regional Director / Registrar of Companies. Some powers which are exercisable by Central Government, which are not delegated, are as follows –

| Section No.        | Details                                                                                                                                                                                                   |
|--------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 58A(8)             | Grant extension of time for repayment of fixed deposits accepted by company or class of companies (after consultation with RBI) – Application is to be filed electronically as attachment to form No. 65. |
| 81(1A)(b)          | Offering of further shares to others with ordinary resolution instead of special resolution.                                                                                                              |
| 81(3)              | Approval of terms for providing option before issue of debenture, or raising loans with such terms, if such issue is not in conformity with Rules issued.                                                 |
| 81(4) or 94A(2)    | Ordering compulsory conversion of debenture or loan into shares.                                                                                                                                          |
| 205(1) proviso (c) | Payment of dividend without providing depreciation - Application to be submitted electronically in form 23AAC.                                                                                            |

|                   |                                                                                                                                                                                                                                                                                                                                                            |
|-------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 205A(3)           | Approval for declaration of dividend out of reserves – Form prescribed under Rules to be submitted electronically.                                                                                                                                                                                                                                         |
| 211(4)            | Modifications in form and contents of balance sheet and P&L account - . Application is to be filed electronically in e-form 23AAA.                                                                                                                                                                                                                         |
| 212(8)            | Exemption from inclusion of particulars of subsidiaries in balance sheet of holding company - Application is to be filed electronically in e-form 23AAB.                                                                                                                                                                                                   |
| 233B              | Approval of appointment of cost auditor. Application to be filed electronically in form 23C.                                                                                                                                                                                                                                                               |
| 237(a)(i)         | Ordering investigation of a company on application.                                                                                                                                                                                                                                                                                                        |
| 259               | Increasing number of directors beyond 12..                                                                                                                                                                                                                                                                                                                 |
| 268               | Amendment to provisions relating to MD / WD / Non rotational directors.                                                                                                                                                                                                                                                                                    |
| 269               | Approval of appointment of MD / WD / Manager if it is not according to Schedule XIII - section 269 - and also increase - section 310                                                                                                                                                                                                                       |
| 274               | Removal of disqualifications of a director.                                                                                                                                                                                                                                                                                                                |
| 294AA             | Approval for appointment of sole selling agents. Application to be filed electronically in 'Form I' as prescribed in Rules.                                                                                                                                                                                                                                |
| 295(1)            | Permission to make loans to director or firm / private company in which he is partner / director etc.                                                                                                                                                                                                                                                      |
| 309               | Applications connected with managerial remuneration - e.g.<br>* Opinion regarding exemption of professional fee paid to directors from being included in remuneration - proviso to section 309(1) * Waiver of recovery of excess managerial remuneration - section 309(5B) * Waive excess amount for holding of office or place of profit - section 314(2) |
| 310               | Increase in managerial remuneration – either in Articles or agreement, if it is not as per Schedule XIII                                                                                                                                                                                                                                                   |
| 314(1B)           | Appointment of relative of director to office or place of profit.                                                                                                                                                                                                                                                                                          |
| 316(4) and 386(4) | Appointment of MD / Manager for more than 2 companies.                                                                                                                                                                                                                                                                                                     |
| 388E              | Removal of director on basis of decision of CLB.                                                                                                                                                                                                                                                                                                           |
| 396               | Amalgamation of companies in national interest.                                                                                                                                                                                                                                                                                                            |
| 408(1)            | Appointment of directors on basis of order of CLB.                                                                                                                                                                                                                                                                                                         |
| 637B              | Condonation of delay in making application to Central Government or filing any document with ROC.                                                                                                                                                                                                                                                          |

***Where no form has been prescribed, application is required to be made as attachment to e- form No. 65.***

**Procedure for application for sanction, permission etc.** - When it is specified that application for permission, consent, approval, confirmation or recognition should be made to Central Government, it should be submitted to Department of Corporate Affairs. Application shall be submitted with prescribed fees. [section 637A(2)].

Application is to be submitted electronically through MCA portal.

The quantum of fees is prescribed *vide* Companies (Fees on Application) Rules, 1999. The fee payable is as follows –

- ✓ Company having share capital – Less than Rs 25 lakhs – Rs 500, Rs 25 lakhs to less than Rs 5 crore – Rs 1,000, Above Rs 5 crore – Rs 2,000
- ✓ Company limited by guarantee – Rs 500
- ✓ Application for license u/s 25 – Rs 500
- ✓ Company having license u/s 25 – Rs 500
- ✓ Foreign Company – Rs 1,000.

When Central Government grants an approval, consent, confirmation or recognition, it can grant such approval, sanction, consent etc. subject to such conditions, limitations, restrictions etc. as may be imposed. In case of contravention of any such condition, limitation or restriction, the approval, sanction, consent, confirmation, recognition, direction or exemption may be withdrawn [section 637A(1)].

**Application for approval of MD or his remuneration** - Application for approval of appointment and remuneration of Managing Director / Wholetime Director / Manager is required if it is not as per norms prescribed in Schedule XIII. Such application should be made in prescribed form. Before making such application, a general notice should be given to members indicating the nature of application being made. Such notice shall also be published in two newspapers in the district - one in English and another in principal language of the district. Copies of such notice and advertisements shall be submitted along with application. [section 640B].

It has been clarified that payment of additional fee is required if form No. 25C (in respect of appointment of MD/WD/Manager) is filed belatedly. Section 637B(b) [providing for condonation of delay by Central Government for late filing of document] is not applicable. – DCA circular No. 15/2002 dated 17-6-2002.

## 10-2 Approvals from Regional Directors

Four regional directors have been appointed at Mumbai, Chennai, Kolkata and Noida (Gautam Budh Nagar) (UP) for four regions. They supervise working of offices of ROC and the official liquidators working in their regions. Almost all work relating to winding up is under Regional Director. An inspection wing is attached to office of RD to carry out inspection of companies u/s 209A.

Following are the powers delegated u/s 637 to Regional Director [GSR No. 288(E) dated 31-5-1991]-

| Section No.           | Details                                                                                                                                                                                                                                                     |
|-----------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 22                    | Approving rectification of name of company - application in e-form - 24A                                                                                                                                                                                    |
| 25(1), (3)            | License allowing not to use the word 'Limited' or 'Private Limited' with name of the company, i.e. licensing charitable companies, associations etc. - application in e-form - 24A..                                                                        |
| 224(3)                | Appointment of auditors when no auditors were appointed at AGM and fix his remuneration - application in e-form - 24A..                                                                                                                                     |
| 224(7)                | Approving removal of auditor before expiry term                                                                                                                                                                                                             |
| 297(1) <i>proviso</i> | Approval to enter into contracts in which directors are interested, when paid up capital of company exceeds Rs one crore - application in e-form - 24A.                                                                                                     |
| 391 and 394           | Court has to give notice to RD, in respect of any application received u/s 391 (compromise or arrangement with creditors or members) or section 394 (reconstruction and amalgamation)                                                                       |
| 394A                  | Regional Director has to submit representation to Court on application for amalgamation - section 394A.                                                                                                                                                     |
| 397 and 398           | CLB has to give notice to RD, in respect of application received u/s 397 (oppression) or 398 (mismanagement)                                                                                                                                                |
| 400                   | Regional Director has to submit representation before CLB on petition u/s 397 / 398 - section 400                                                                                                                                                           |
| 433 / 439(5)          | Giving permission to Registrar of Companies for presenting petition for winding up.                                                                                                                                                                         |
| 496(1)(a)             | Granting time to liquidator to call general meeting beyond period of three months in members' voluntary winding up.                                                                                                                                         |
| 508(1)(a)             | Granting time to liquidator to call general meeting beyond period of three months in creditors' voluntary winding up.                                                                                                                                       |
| 551(1)                | Information by liquidator in respect of pending liquidations.                                                                                                                                                                                               |
| 555                   | Notice in respect of claim to Court for payment out of liquidation account and approval of payment of interest to liquidator.                                                                                                                               |
| 610(1) <i>proviso</i> | Inspection of prospectus filed with ROC after 14 days.                                                                                                                                                                                                      |
| 621A                  | Regional Director can compound certain small offences – Section 621A when fine to be imposed does not exceed Rs 50,000. Application is to be submitted electronically in e-form No. 61. It will be forwarded by ROC to Regional Director with his comments. |
| 627(1)                | Making application to judge of High Court to order production and inspection of books when offence committed.                                                                                                                                               |

### 10-3 Registrar of Companies

Offices of Registrars of Companies (ROC) have been opened in various States to look after administration of company law. ROC is with the company right from company's birth to death. Registration certificate is issued by him. The term 'Registrar' includes Additional, Joint, Deputy or Assistant Registrar. [section 2(40)].

**Powers and functions of ROC** - Some powers and functions of Central Government have been delegated to the Registrars under section 637. Some

powers have been prescribed in the Act itself. Powers and functions of ROC are as follows -

| Section No.                  | Details                                                                                                                                                                                       |
|------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 20                           | Confirming availability of name - application in form 1A.                                                                                                                                     |
| 21                           | Approval of change of name – Application for availability of name to be submitted in e-form 1A. Then, application may be submitted electronically in e-form No. 61 [Power delegated u/s 637]. |
| 31(1) <i>proviso</i>         | Alteration of Articles for conversion of public company into private company - application in form 1B [Power delegated u/s 637].                                                              |
| 33                           | Registration of company.                                                                                                                                                                      |
| 75(3)                        | Extension upto one month for filing return of allotment.                                                                                                                                      |
| 108(1A)                      | Date stamping of share transfer form before execution.                                                                                                                                        |
| 108(1D)                      | Extension of time for delivery of instrument of transfer to company                                                                                                                           |
| 125 and 141                  | Registration of charges, modification and satisfaction                                                                                                                                        |
| 141                          | Condonation of delay in filing charges and satisfaction of charges upto 300 days on filing of additional fees                                                                                 |
| 166(1) second <i>proviso</i> | Extension of time for holding AGM upto three months                                                                                                                                           |
| 210(4)                       | Extension of accounting year. Application to be submitted electronically in e-form No. 61.                                                                                                    |
| 205B                         | Order for payment of dividend from general revenue account of Central Government. [Now, this provision is applicable only in respect of dividend credited upto 31st October, 1998].           |
| 560                          | Restoring name of a company struck off by Registrar                                                                                                                                           |
| 572                          | Change of name if name found to be undesirable [Power delegated u/s 637].                                                                                                                     |
| 611                          | Registration of all documents required to be filed with ROC by accepting filing fee and additional fee.                                                                                       |
| 621                          | File criminal complaint in writing in Court in respect of any offence under Companies Act..                                                                                                   |
| 621A                         | Accepting application for compounding of offences (ROC will forward it to CLB/RD as applicable). Application to be submitted electronically in e-form No. 61.                                 |

## 10-4 Company Law Board

A quasi-judicial authority named 'Company Law Board' has been formed u/s 10E. CLB is basically a Tribunal to decide various matters under Companies Act. CLB was constituted on 31st May, 1991. Many powers earlier exercised by High Court have been entrusted now to CLB. Company Law Board consists of members (not more than 9) appointed by Central Government. Members consist of judicial members and technical members having prescribed qualifications and experience. One of the members is appointed as Chairman.

CLB has principal bench at 5th floor, A wing, Shastri Bhavan, Dr. Rajendra Prasad Road, New Delhi - 110 001. Tel - 3382265. Additional Principal Bench has been constituted at Chennai w.e.f. 19.12.2000. CLB has four regional benches - Northern (at New Delhi), Southern (at Chennai), Western (at Mumbai) and Eastern (at Kolkata). Website of CLB is <http://www.clb.nic.in>.

**Important powers exercisable by CLB** - Following are some of the important powers which are exercisable by CLB -

| Section No.     | Details                                                                                                                                   |
|-----------------|-------------------------------------------------------------------------------------------------------------------------------------------|
| 10E(4B)         | Formation of benches                                                                                                                      |
| 17(2)           | Change in memorandum for shifting registered office to another State.                                                                     |
| 18(4) and 19(2) | Extension of time for filing documents relating to confirmation of alteration of Memorandum or for registration of alteration             |
| 43              | Grant of relief to a private company from consequences of accidental failure to comply with conditions constituting it a private company. |
| 58A(9)          | Relief to investors in case of failure to make repayment of fixed deposits in time.                                                       |
| 58AA            | Ordering repayment of small depositors.                                                                                                   |
| 79              | Sanctioning issue of shares at discount.                                                                                                  |
| 80A proviso     | Consent to issue further redeemable preference shares in lieu of redeemed preference shares.                                              |
| 111 and 111A    | Rectification of Register of members.                                                                                                     |
| 113(1)          | Extension of time for delivery of certificates of debentures and debenture stocks by 9 months.                                            |
| 117B            | Restrictions on company in creating further liabilities if assets are insufficient to redeem debentures or interest thereon.              |
| 117C            | Order redemption of debentures and payment of interest thereon.                                                                           |
| 118(3)          | Direction to send copies of debenture trust deed to person requiring it                                                                   |

|                 |                                                                                                                                                                                                                                                                                                                                             |
|-----------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 141(1)(3)       | Condonation of delay in registration of charges beyond 300 days                                                                                                                                                                                                                                                                             |
|                 | Ordering inspection of register of members, register of investment in nominee's name, minute book of member's meetings, register of directors, register of directors' share-holding etc. in case of refusal                                                                                                                                 |
| 167 and 186     | Calling AGM / EOGM.                                                                                                                                                                                                                                                                                                                         |
| 188             | Determining whether rights of requisitionists to get their resolution circulated to members being abused and for ordering company's costs to be paid by requisitionists                                                                                                                                                                     |
| 219(4)          | Direction that copy of balance sheet and auditors report be furnished forthwith to person concerned                                                                                                                                                                                                                                         |
| 225(3) proviso  | Determining whether rights of auditors to get their resolution circulated to members being abused and for ordering company's costs to be paid by the retiring auditors                                                                                                                                                                      |
| 235(2)          | Declaration by order that affairs of the company be investigated.                                                                                                                                                                                                                                                                           |
| 237(b)          | Formation of opinion as to circumstances requiring investigation into affairs of company.                                                                                                                                                                                                                                                   |
| 247(1A) and 250 | CLB can order under section 247 (1A), for investigation of ownership of the company and related matters, in the course of any proceeding before it. During investigation, CLB can order restrictions on transfer or issue of shares, or their voting rights u/s 250                                                                         |
| 269             | Reference to CLB if Central Government is of opinion that appointment of MD / WD / Manager made without approval of Central Government is in contravention of requirements of Schedule XIII. [If appointment is as per requirements of Schedule XIII, approval of Central government is not required for appointment of MD / WD / Manager]. |
| 284(4) proviso  | Determining whether right of director to get his resolution circulated to members (or read at the meeting) is being abused and for ordering company's costs to be paid by the director.                                                                                                                                                     |
| 388B            | Cases against managerial personnel in conduct and management of affairs of the company to decide whether a person is fit and proper person to hold office of director, manager, MD, WD etc.                                                                                                                                                 |
| 397 and 398     | Relief in case of oppression and mismanagement                                                                                                                                                                                                                                                                                              |
| 406             | CLB can impose penalty for falsification of books, fraud, fraudulent conduct of business, damages etc. as provided in Schedule XI to Companies Act.                                                                                                                                                                                         |
| 408             | Ordering appointment of Government directors.                                                                                                                                                                                                                                                                                               |
| 407(1)(b)       | A MD/WD or Manager whose agreement is terminated or set aside u/ss 397 or 398 cannot be reappointed for a period of five                                                                                                                                                                                                                    |

|        |                                                                                                                                                                                                                                                             |
|--------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|        | years, without leave of CLB.                                                                                                                                                                                                                                |
| 409(1) | Preventing change in Board of Directors if likely to affect the company prejudicially.                                                                                                                                                                      |
| 610(2) | Compelling production of any document filed with Registrar of Companies.                                                                                                                                                                                    |
| 614    | Directing company to file any return, account or document with ROC which the company is required to do under the Act.                                                                                                                                       |
| 621A   | Composition of offences punishable with fine above Rs 5,000 or punishable with fine and imprisonment. CLB has powers to compound an offence under section 621A without any permission from the Court. This aspect has been discussed in an earlier chapter. |
| RBI    | Order repayment of deposits accepts by NBFC - power granted under section 45QA(2) RBI Act, 1934                                                                                                                                                             |

Besides above, many other powers have been delegated to CLB under various sections for allowing inspection of registers by members, calling AGM or EOGM, condoning delay in filing particulars of charge or modification of charge.

### 10-5 National Company Law Tribunal and Appellate Tribunal

National Company Law Tribunal (NCLT) is being constituted to look after work hitherto being done by Company Courts and Company Law Board (CLB).

Certain provisions in respect of NCLT have been declared as unconstitutional and invalid in *Thiru R Gandhi v. UOI* (2004) 52 SCL 79 (Mad HC DB). Appeal against the decision was filed with Supreme Court. The matter has been referred to Constitution Bench on 18-5-2007 – *UOI v. R Gandhi* (2007) 76 SCL 350 (SC).

### 11 Procedures under Company Law

A company is required to maintain various records and registers. It has to file various documents and returns with Registrar of Companies [ROC]

**Returns to be filed by company** - Every company has to file various returns. Important among them are as follows—

- o Annual Return - Every company must file annual return (section 159/160) – to be filed electronically in e-form 21A
- o Three copies of balance sheet adopted at general meeting (section 220) – to be filed as scanned attachment to e-form 23AC.
- o Special Resolutions, appointment of MD (sections 192)
- o Charges created, modified, satisfied
- o Appointment/changes/resignations of Director, Manager or Secretary.

- o Consent to act as director (in case of public company)
- o Other returns as and when required
- o Some companies have to file Secretarial Compliance Certificate [section 383A(1)]

**Forms for returns** - Company (Central Government's) General Rules and Forms, 1956 prescribe various forms in which returns have to be filed with ROC. **Following forms have been prescribed in the Schedules to Companies Act.**

|              |                                                                                                                            |
|--------------|----------------------------------------------------------------------------------------------------------------------------|
| Schedule II  | Requirements of Prospectus, required u/s 60(1)                                                                             |
| Schedule III | Statement in lieu of prospectus, required u/s 70(1)                                                                        |
| Schedule V   | Annual Return, required u/s 159. [Some companies have to file Secretarial Compliance Certificate along with Annual Return] |
| Schedule VI  | Form of Balance Sheet & requirements of P&L account                                                                        |
| Schedule IX  | Form of Proxy                                                                                                              |

Prescribed period for filing many of these documents is 30 days, except in some cases, where it is different.

### 11-1 Resolutions required to be filed with the ROC

Routine resolutions at the general meeting like appointment of directors, auditors, adoption of accounts and directors' report are not required to be filed with Registrar of Companies. However, following resolutions of general meeting have to be filed—

- o All special resolutions (along with explanatory statement)
- o Resolution regarding appointment and terms of appointment of Managing Director, whether passed in general meeting or board meeting
- o Resolutions of class of shareholders binding all members of any class of share-holders
- o Resolutions authorising Board of Directors u/s 293 to (a) sell, lease or otherwise dispose of whole or substantially whole of the undertaking (b) Borrowing money in excess of paid up capital and free reserves or (c) Contribute to charitable fund not directly relating to business of the company or welfare of its employees in excess of Rs 50,000 or 5% of average profits in last three years, whichever is greater.
- o Resolution approving appointment of sole selling agents u/s 294
- o Special Resolution passed under section 484(1) requiring a company to be wound up voluntarily.

*Following resolutions of the Board of Directors and copies of some agreements have also to be filed with ROC, within 30 days—*

- o Resolution of Board of Directors for appointment and terms of appointment of Managing Director
- o Copies of terms of appointment of a sole selling agent.

**Electronic filing of resolutions** – The resolutions required to be filed u/s 192 are to be filed as scanned attachment to e-form 23.

## 11-2 Payment of filing fees

Fees are payable for registration of a company as well as for filing any document. The fees are prescribed in Schedule X of Companies Act. Fees for filing, registering or recording a document or for making a record of or registering any fact, required to be recorded under Companies Act, as follows –

| Description                                                                             | Filing Fees Rs |
|-----------------------------------------------------------------------------------------|----------------|
| Nominal share capital (Authorised Capital) less than Rs one lakh                        | 100            |
| Nominal share capital (Authorised Capital) Rs 1 lakh or more but less than Rs 5 lakhs   | 200            |
| Nominal share capital (Authorised Capital) Rs 5 lakhs or more but less than Rs 25 lakhs | 300            |
| Nominal share capital (Authorised Capital) Rs 25 lakh and above                         | 500            |
| Company not having share capital                                                        | 50             |
| Foreign company                                                                         | 5,000          |

**Electronic payment of fees** - Fees are to be paid electronically through credit card or by special challan generated by computer when e-form is filed through MCA portal i.e. [www.mca.gov.in](http://www.mca.gov.in).

**Other fees payable** – Fees for inspection of documents at office of ROC is Rs 50/-. Fees for obtaining copy of certificate of incorporation is Rs 50/-. Fees for obtaining extract of other documents including hard copy of such documents on computer readable media is Rs 25/- per page. Fees for registering document relating to foreign company is Rs 5,000. Fees are to be paid electronically through credit card or by special challan generated by computer when e-form is filed through MCA portal i.e. [www.mca.gov.in](http://www.mca.gov.in).

### 11-3 Secretarial Compliance Certificate

A company which has paid up capital of Rs ten lakh or more but which is not required to appoint a full time Company Secretary (as its paid up capital is less than Rs 200 lakhs) is required to obtain Secretarial Compliance Certificate from a Secretary in Wholetime Practice. Such certificate should be filed with Registrar of Companies. – *proviso* to section 383A(1).

As per Rules, the certificate should be filed within 30 days from date of AGM. If AGM was not held for any reason, the certificate should be filed within 30 days from the last date on which the AGM should have been held. The certificate should also be attached to report of Board of Directors. [proviso to section 383A]. Separate filing of certificate is required even if the copy of certificate is attached to report of Board of Directors.

### 11-4 Registers and Records

A company has to maintain certain statutory registers and books.

The records and registers to be maintained are as follows -

| Section No.          | Details                                                                                                                                             | Right of Inspection                                                             |
|----------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------|
| 49(7)                | Register of investment in shares or securities not held in company's name.                                                                          | Member or debenture holder without any fees                                     |
| 58A read with rule 7 | Register of Public Deposits.                                                                                                                        | Registrar of Companies or authorised Govt officer.                              |
| 77A                  | Register of shares bought back by a private company or unlisted public company (section 77A, read with Buy Back of Securities Rules, 1999)          | Registrar of Companies or authorised Govt officer or authorised officer of SEBI |
| 79A                  | Register of sweat equity shares by unlisted company [Section 79A read with rule 5 of Unlisted Companies (Issue of Sweat Equity Shares) Rules, 2003] | Registrar of Companies or authorised Govt officer or authorised officer of SEBI |
| 86                   | Register of shareholders with Differential Rights with Index of Members, as per Rules.                                                              |                                                                                 |
| 118(4)               | Trust deed for securing any issue of debentures                                                                                                     | Member or debenture holder                                                      |

|        |                                                                                                                                                       |                                                                                                 |
|--------|-------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------|
| 136    | Copy of every instrument creating any charge requiring registration                                                                                   | Creditor or member or debenture holder without fees.                                            |
| 143(1) | Register of Charges.                                                                                                                                  | Creditor or member or debenture holder without fees and by others with fess of Rs 10.           |
| 150(1) | Register of members.                                                                                                                                  | Member or debenture holder without fees and by others with fess of Rs 10.                       |
| 151(1) | Index of members if company has more than 50 members. Such index is not necessary if register itself is maintained in index form.                     | Member or debenture holder without fees and by others with fess                                 |
| 152(1) | Register of Debenture holders.                                                                                                                        | Member or debenture holder or trustee without fees and by others with fess of Rs 10             |
| 152(2) | Index of debenture holders if company has more than 50 debenture holders. Such index is not necessary if register itself is maintained in index form. | Creditor or member or debenture holder or trustee without fees and by others with fess of Rs 10 |
| 152A   | Register and index of beneficial owners (Demat form ) - required under Depositories Act. This has to be maintained by Depository.                     |                                                                                                 |
| 157(1) | Foreign register of members and of debenture holders (if any), to be maintained outside India.                                                        | Member or debenture holder without fees and by others with fess                                 |
| 158(4) | Duplicate of such foreign register of members and debenture holders.                                                                                  | Member or debenture holder without fees and by others with fess                                 |
| 163(1) | Copies of annual returns together with copies of certificates and documents required to be annexed thereto.                                           | Member or debenture holder without fees and by others with fess of Rs 10                        |

|        |                                                                                                                                                                                                                                      |                                                                                                      |
|--------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------|
| 174    | Record / register of shareholders attendance at general meetings (for purpose of quorum u/s 174). Register / record of proxies at general meeting is also required.                                                                  |                                                                                                      |
| 176(7) | Proxies lodged u/s 176                                                                                                                                                                                                               | Member entitled to vote.                                                                             |
| 192A   | Register of postal ballot                                                                                                                                                                                                            |                                                                                                      |
| 193(1) | Minutes of board meeting and committees of Board..                                                                                                                                                                                   | Registrar of Companies or authorised Govt officer, Auditors                                          |
| 196    | Minutes of general meeting                                                                                                                                                                                                           | Member without fees                                                                                  |
| 209(1) | Books of account with respect to receipts and expenditure, sale and purchase of goods and other cost records.                                                                                                                        | Director, Registrar of Companies or authorised Govt officer or authorised officer of SEBI, Auditors  |
| 209(2) | Proper Books of account relating to transactions effected at branch office.                                                                                                                                                          | Director, Registrar of Companies or authorised Govt officer or authorised officer of SEBI, Auditors. |
| 223    | Statement to be published by limited banking company, insurance company or a deposit, provident or benefit society in form F in schedule I has to be displayed at registered office and in every branch office or place of business. |                                                                                                      |
| 230    | Auditors' Report                                                                                                                                                                                                                     | Member at the time of AGM only.                                                                      |
| 285    | Directors' Attendance Book at Board meetings [required as per Articles – regulation 71 of Table A]                                                                                                                                   |                                                                                                      |
| 301(1) | Registrar of contracts, companies and firms in which directors are interested.                                                                                                                                                       | Member without charge and others on payment of fees of Rs 10                                         |
| 302(6) | Contracts for appointment of Managing Director / Manager.                                                                                                                                                                            | Member without charge and others on payment of fees                                                  |

|                 |                                                                                                                                                                                                    |                                                                                                                            |
|-----------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------|
|                 |                                                                                                                                                                                                    | of Rs 10                                                                                                                   |
| 303(1)          | Register of directors, managing director, manager and secretary.                                                                                                                                   | Member without fees.                                                                                                       |
| 307(1)          | Register of Directors' shareholding in the company or its holding or subsidiary companies.                                                                                                         | Member without charge only 14 days prior to and 3 days subsequent to AGM and during AGM.<br><br>Others on payment of fees. |
| 372A(5)         | Register of loan or investments made, guarantee given or security provided by the company.                                                                                                         | Member without charge and others on payment of fees of Rs 10                                                               |
| 417 to 419      | Post Office or Bank receipts relating to employees' deposits and PF amounts                                                                                                                        | Concerned employee.                                                                                                        |
| 581ZE and 581ZL | Books of account and register of Investments of Producer Company.                                                                                                                                  |                                                                                                                            |
|                 | Register of Renewed and Duplicate Certificates [as per Companies (Issue of Certificate) Rules. - - Register of Share Certificates/Debenture Certificate issued                                     |                                                                                                                            |
|                 | Register of fixed assets - required under CARO                                                                                                                                                     |                                                                                                                            |
|                 | Register of documents destroyed - required under Companies (Preservation and Disposal of Records), Rules, 1966.                                                                                    |                                                                                                                            |
|                 | Register of fixed deposits - required under Companies (Acceptance of Deposits) Rules, 1975                                                                                                         |                                                                                                                            |
|                 | Register of share transfers                                                                                                                                                                        |                                                                                                                            |
|                 | Record / register of documents executed under common seal. [Not statutory requirement, but it is good secretarial practice. This is also recommended in Secretarial Standard SS-4 issued by ICSI]. |                                                                                                                            |

The pre-printed forms of the registers can be obtained from market. A consolidated register containing all registers is also available. It is useful for small companies not having many transactions.

**Registers by listed company as per SEBI regulations** – A listed company is required to maintain following registers as per SEBI regulations.

- o Register in terms of SEBI Takeover Regulations
- o Register in terms of SEBI Prohibition of Insider Trading Regulations

**Place where register should be maintained** - The registers should be normally maintained at the registered office of the company. However, in some cases, exception is provided.

Copies of documents - Copies of following documents can be obtained by anyone by paying fees of Re 1 per 100 words - Register of charges (but not the instrument creating the charge) \* Register of members and debenture holders and their indexes \* Foreign register \* Copies of annual return (section 163 of Companies Act).

## 12 MCA-21

Ministry of Corporate Affairs (MCA) has launched an ambitious program of introducing e-governance for managing the work relating to Ministry of Corporate Affairs. All physical filing of forms has been discontinued and converted into e-filing. It is almost a digital and paperless working of MCA except in few cases where paper work is unavoidable due to legal and statutory requirements. Presently, winding up procedures have not been covered in the programme. The project is termed as 'MCA-21' and has been implemented with help of Tata Consultancy Services and CMC. The project is fully operational on 15-9-2006 and entire work relating to MCA, all physical filing of documents and forms has been converted into e-filing.

Salient features of the scheme and the rules are discussed in following paragraphs.

### 12-1 Highlights of MCA-21 Scheme

The highlights of the new system are as follows -

- o Existing forms meant for physical filing have been converted into e-forms. The new e-forms have already been notified.
- o Some old forms have been eliminated and combined with new form (e.g. form 29 merged with form 32).
- o Filing of forms and applications will be through internet.
- o Form can be filed online. Alternatively, these can be downloaded, filled offline and then filed.
- o Pre-scrutiny is done in the portal before the form is accepted for submission.
- o E-form should be digitally signed by Managing Director, Director, Manager or Secretary. They will have to obtain DSC (Digital Signature Certificate).
- o Documents to be attached must be in PDF format. Facility is available on portal to convert document into PDF format.
- o Paper documents which are to be submitted will have to be scanned and

attached to the e-forms.

- o In cases where payment of stamp duty is required, original document bearing stamp duty will have to be filed in office of ROC, after e-filing is done.
- o Payment of fees can be through internet through credit card/internet banking. Those who do not have these facilities, can pay the fees through designated banks. Filing of form will be valid only when filing fee is paid.
- o Many forms require certification by CA/CWA/CS in practice. In some cases, Secretary in full time employment of company can certify the form.
- o If a company has sufficient equipment and facilities, the documents can be filed by company from its office itself. This is called 'Virtual Office'
- o Those who do not have adequate facilities can file documents through Facilitation Centres established in various cities which are presently manned by TCS. Otherwise, help of facilitation centres or CFS (Certified Filing Centres) can be obtained.
- o 'Certified Filing Centres' (to be operated by professionally qualified persons/bodies of CA/ICWA/CS) will facilitate e-filing of documents.
- o Every director will have to obtain DIN (Director's Identification Number).
- o Physical filing of documents is discontinued w.e.f. 15-9-2006 and e-filing is compulsory from that date.
- o Office of ROC, Regional Director and Delhi HQ will process the documents and applications submitted electronically by companies.
- o Issuance of certificates and approvals will continue to remain on paper. This will be dispatched by post or courier to applicant.

**Website to be accessed** - User has to access <http://www.mca.gov.in> to upload the forms, inspect the documents and get other details.

**Round the clock working** - System is available round the clock. Thus facilities are available on all days at any time of day/night [para 4(15)(c) of Annexure 'A' of Scheme notified on 26-10-2006].

**Help facilities** - The companies/professionals can seek help from the Ministry of Corporate Affairs by using the e-mail ID [appl.helpdesk@mca.gov.in](mailto:appl.helpdesk@mca.gov.in) or by using the call centre number 64506000 from Delhi, Mumbai, Ahmedabad, Hyderabad and Bangalore.

- o **Services available on MCA-21** - Following services will be available under MCA-21 project -
- o Registration and incorporation of new companies.
- o Filing of annual returns and balance sheets.
- o Filing of forms for change of name/address/director's details.
- o Registration, modification and verification of charges.
- o Inspection of documents.
- o Issue of certified copies.
- o Applications for permissions required under various provisions of Company Law.

- o Approvals from Central Government, Regional Director and ROC (It will be sent physically by post).
- o Investor Grievance Redressal.

## 12-2 Essential steps before filing form

Following steps are required before a document/form can be filed electronically.

**Corporate Identity Number** - Each company (Indian or foreign) has a unique CIN (Corporate Identity Number). This is required to be quoted on all forms. Once the number is given, company details are automatically filled-in by using pre-fill function.

Existing companies can obtain their CIN by accessing MCA portal, i.e. [www.mca.gov.in](http://www.mca.gov.in). CIN will be displayed when name of company, its registration number and ROC code is entered. System displays only current name and CIN. Name and CIN of company can change.

**Digital Signature** - Forms have to be digitally signed by Managing Director, Director, Manager or Secretary to show authenticity of person signing the same. Some forms have to be certified by practising CA/CWA/CS or Advocate. They also have to sign it digitally. In some cases, signature of third party like Bank or Financial Institution is required (e.g. registration or satisfaction of charge). They will also have to obtain a digital signature.

Digital signature should be a CLASS-2 or equivalent. Digital Signature has to be obtained from Certifying Authority. It is normally valid for one or two years and then has to be renewed. Various agencies have been authorised by Controller of Certification Authority to issue DSCs to persons. The DSC comes with a hardware to be attached to computer and password.

**Registration of DSC and role-check** – All directors, practicing professionals (CA/CWA/CS, Authorised Signatory (Secretary and Manager) must register their DSC on MCA portal. This is mandatory w.e.f. 1-7-2007. Role-check means the system will verify at the time of uploading of e-forms whether signature affixed belongs to the signatory whose DSC has been registered on the MCA portal.

Registration will be done by clicking on 'Register DSC' link on MCA homepage. After successfully registering the digital signature, acknowledgment message will be displayed. User can take a print-out of the acknowledgment [CS June 2007 page 719]

One person can have only one DSC even if he signs in different capacities e.g. a practicing professional or Secretary may also be a Director in some company. Their DSC can be registered multiple times on the MCA portal under the appropriate role i.e. practicing professional, Secretary, Manager or director – MCA website – reproduced in CS August 2007 issue page 1119.

**Information of authorised persons** - Companies registered upto 30-6-2007 are required to inform their authorised signatories in form DIN-3. In respect of companies registered on or after 1-7-2007, DIN-3 is not required, as the details will be captured through DIN-1 and form 32 – MCA DO letter No. HQ/86/2006-Computerisation dated 18-6-2007 (see CS July 2007 page 861).

**Registration of user** - Each user of the portal will require to be registered. He has to choose user ID or password or enter his digital certificate, depending upon the user. This ID and password/digital certificate is required to be given every time a person logs in.

Following users will require registration -

- o Authorised Signatory of Business
- o Professional like CA/ICWA/CS/Advocate
- o Individual user
- o Facilitation Centre/CFS
- o Public User

Access rights for different categories of users are different. The registration is free of cost. Password can be charged. If password is forgotten, it can be retrieved by using 'Forgot Password' link and answering hint question. After that, new password will have to be entered.

### 12-3 How to file documents electronically

Three modes are available - (a) Virtual Office - i.e. from own office (b) Facilitation Centres manned by BOOT Operator i.e. TCS (Tata Consultancy Services) and (c) Certified Filing Centres (CFS).

The conventional forms have been modified to facilitate filing of the form in electronic format. The forms are in PDF format. The forms are being modified frequently with very short notice.

**Grouping of forms** - Forms have been grouped under various broad categories as follows -

- ✓ Company Registration.
- ✓ Compliance related filing e.g. annual returns, balance sheets, return of allotment, return of deposits.
- ✓ Change services e.g. change in capital structure, change in directors, change in registered offices.
- ✓ Charge Management - Registration, modification and satisfaction.
- ✓ Investor Services i.e. complaints from investors regarding shares, dividend, debentures, fixed deposits.
- ✓ Provisions relating to managerial personnel - MD, remuneration of directors,

- commission to directors
- ✓ Approval Services - Headquarters (where approval is to be granted by Central Government).
- ✓ Approval Services - Regional Director (where powers are delegated to RD for granting approval).
- ✓ Approval Services - ROC (where approval is to be given by ROC).
- ✓ Information Services - Information to ROC in compliance with requirements of Companies Act - form 1AA, 23, 23AA, 35A.

**Filling of form** - E-form can be filled on line or off line. Advantage of filling off line is that you can fill the form in stages at leisure and save completed portion. Even if your form is half filled, your efforts do not go waste.

You can use 'Prefill' button to fill in the static data automatically e.g. name and address of registered office is entered automatically after CIN is filled. The internet connection should be on.

**Check form** - Forms have built in facility of check and validation. This can be done by clicking 'Check Form'. The 'check form' is done without being connected to internet.

Form can be modified by clicking 'Modify' button.

**Pre-scrutiny** – After 'check form' is done, pre-scrutiny of forms is required to be done before the form is uploaded. The computer is required to be connected to MCA portal for this purpose. If there are errors, they are displayed. After correcting errors, again 'Pre-scrutiny' is required to be done.

**Uploading after attaching digital signature** - Forms are uploaded after they are filled in by clicking 'Submit' button. Forms have to be signed digitally, before pressing 'Submit' button.

**Role-check of Digital Signature** – All professionals certifying forms and all authorised signatories of company are required to register their digital signatures on MCA portal. The signature will be role-checked with digital signature registered on MCA portal. The e-form will be accepted only if details were filed in DIN-3 and signature is registered with MCA – MCA DO letter No. HQ/86/2006-Computerisation dated 18-6-2007 (see CS July 2007 page 861).

**On line scrutiny of forms** - The form submitted will be scrutinised online for completeness or discrepancy and will be accepted only if it is complete. If form is rejected, it will be returned to user with nature of defects. After form is submitted, it will go into MCA central document repository.

**Payment by challan or credit card** - After form is submitted, 'Pay' button should be pressed. On 'challan payment option', a challan is generated with three copies.

Payment should be made in any one of the five authorised banks, by using this challan.

**Attachments to forms** - Attachments to the forms should be scanned or converted into PDF format. The form indicates what are the attachments required. The portal has facility to convert any document format into PDF format. You have to click 'Convert to PDF' link under Services tab after logging into the portal.

Files in word, excel, jpg, tiff format etc. are not accepted. These have to be converted into pdf format.

**Files of Annual Returns and Balance Sheets** - Files of Annual Returns and Balance Sheet (maintained by company in word or Excel format) need not be physically signed. These can be marked 'Sd' at place of signature, converted into pdf format and then attached. Attachments should not be filed as scanned images. It is not necessary to scan signed copy of attachment, since it increases the file size considerably – Ministry press Note HQ/82/2006-Computerisation dated 31-7-2006 and para 4(7) of Annexure 'A' of Scheme as notified on 26-10-2006.

**Breaking of big attachments** - Big attachments cannot be accepted. These can be broken into small parts. The size of any attachment cannot be more than 2.5 MB. In case of scanned documents, attachment may be broken into parts of 15 to 20 pages. Documents in multiple parts are acceptable. Attachment with file size greater than 2.5 MB is not accepted.

**How to attach a document** - Document is required to be attached by clicking 'attach' button. Attached document can be removed by clicking 'Remove Attachment'.

**Submission of original papers in physical form in some cases** - In cases where the document is required to be stamped (e.g. Memorandum and Articles of Association, Increase in share capital, declaration on stamp paper, power of attorney), original document is required to be sent to ROC, after e-filing is done. Similarly, where order of High Court of CLB is to be filed, original will have to be sent to ROC. The user will be providing SRN (Service Request Number) while sending these original documents. This would ensure authenticity and reliability of these key documents.

**Pre-certification by professionals** – Some form have to be pre-certified by professional e.g. Practising CA, ICWA or CS to ensure authenticity. They will have to digitally sign the eform. Form Nos. 2, 3, 5, 8, 10, 17, 18, 23, 24AB and 32 and 61 are required to be pre-certified. Form No. 1 can be signed by PCS, CA or Advocate.

Certain other forms e.g. Form No. 1 for declaration of dividend out of reserves, form No. 1 under Investor Education and Protection Fund is also to be pre-certified.

**Service Request Number** – Once an uploaded form is accepted, a 'SRN' (Service Request Number) is generated. Status of any transaction can be checked anytime by entering SRN (Service Request Number). Acknowledgment will be sent by e-mail.

Legal recognition of electronic records has been provided in sections 4 and 6 of Information Technology Act. These are overriding provisions.

**Payment of fees** - After eForm is submitted, filing fee is payable. Fee payable is calculated by system and displayed to user. Fees can be paid online by credit card/internet banking or offline by way of bank challan.

**Addendum to form already submitted** – After form is submitted, the scrutinising officer may ask for further documents. These can be submitted as addendum to original form with the given SRN. Payment of fees is not required while submitting addendum. The system will accept 'addendum' only when status of the form is 'in Progress'.

**Re-submission of forms** – After the form is scrutinised, MCA authorities may ask the user to re-submit the form. Such re-submission is permissible only when MCA authority asks user to re-submit the form i.e. status of form is 'Required Re-Submission'. No fees are payable. Once new form is submitted, old form is deleted from MCA document repository.

**Charge ID of existing charges** – About 10 million pages relating to existing subsisting charges have been digitized and inter-linkages have been established within a company. Index of charges has been prepared. While filing form 17 (satisfaction of charge) or form 8 (modification of existing charge), Charge Identification Number is required to be given. In case of all existing charges, Charge ID (Charge Identification Number) has been generated. The Charge ID can be seen through 'View Index of Charges' link after logging MCA portal i.e. [www.mca.gov.in](http://www.mca.gov.in).

**ITC code of products** – In e-form 23AC (form for filing balance sheet, P&L account), 8 digit ITC (Indian Trade Classification) code is required to be given. This is available on <http://www.dgciskol.nic.in> [This code is based on HSN and hence practically same as per Excise or Customs Tariff] [There is no ITC code for services. It is not clear what service provider should fill in 'ITC Code' and whether e-form 23AC will be accepted by system, if this column is kept blank].

#### 12-4 Procedure after submission of form

After fee is paid, the form is assigned to appropriate MCA employee for office work. He will affix his digital signature for registering/ approving/ rejecting the form. After the processing of eForm is completed, an acknowledgment by email is sent to user regarding approval/rejection of form submitted.

**Status monitoring** - Status of a document submitted can be checked by entering SRN (Service Request Number). Payment status can also be viewed with the help of SRN (Service Request Number).

The status can be any of following - (a) Waiting for payment (b) Transaction cancelled - payment not received (c) Work in progress (d) Waiting for user information (e) Approval (f) Required resubmission (g) Rejected.

**Procedure for registration at office of ROC** – Each document filed will be assigned a unique number. Following particulars shall be endorsed electronically on every document registered, recorded or filed – (i) Number assigned to company (ii) Unique number assigned to document and (iii) Date on which it is registered, recorded or filed [Regulation 19(1) of Companies Regulations].

The endorsement on the document will be authenticated by Registrar through a digital signature [Regulation 19(2) of Companies Regulations]. If such endorsement on document is not possible, it will be attached to the document with a note regarding such attachment on the document. It will be signed digitally by Registrar [Regulation 19(3) of Companies Regulations].

In case of physical filing, the above will be done manually by Registrar.

## 12-5 Director Identification Number (DIN)

Every person who is a director or who intends to become a Director, must obtain DIN (Director Identification Number). It will enable Government to keep control and facilitate legal actions against erring directors. It is a life time number. One person should have only one DIN.

DIN is not required for directors of foreign company having branch offices in India, but DIN is required by foreign directors of Indian companies.

DIN is essential for every director including nominee directors and Government appointed directors. However, only those directors who are required to sign e-forms are required to obtain digital signature certificate (DSC). Other directors need not have DSC.

2006. Procedures relating to DIN have been prescribed in Companies (Director Identification Number) Rules, 2006. The prescribed procedure is as follows -

**Provisional DIN** - Details are to be submitted through internet in form DIN-1. On submission of form electronically, provisional DIN is given by system electronically. [Rule 3(4) of DIN Rules]. Till 30-6-2007, provisional DIN number could be used for e-filing. Now, provisional DIN number cannot be used from e-filing w.e.f. 1-7-2007 – MCA DO letter No. HQ/86/2006-Computerisation dated 18-6-2007 (see CS July 2007 page 861).

**Formal application after provisional DIN** - After obtaining provisional DIN, duly signed application in DIN-1 form is to be submitted within 60 days to Central Government. Application should be submitted along with proof of identity (copy of any one of PAN card, driving license, passport or voter Id card) and proof of residence (copy of any one of passport, voter ID card, ration card, telephone bill, electricity bill, bank statement). Photograph has to be affixed in the space provided.

Documents are required to be certified by (a) notary public (b) gazetted officer (c) practising CA/CS/CWA or (d) company secretary in full time employment of the company [rule 3(5)(ii)].

If you have made mistake in filling DIN-1 Application form, you should submit fresh form. System will throw a warning 'Potential Duplicate'. Accept the same and further processing would be done accordingly.

Fees of Rs 100 are payable along with application [rule 4]. [No fee was payable if application was made before 31-12-2006].

**Where to send the completed application form** - Powers of Central Government in respect of DIN u/ss 266A and 266B have been delegated to Regional Director, Joint Director, Deputy Director or Assistant Director of Northern Region, vide notification No. GSR 650(E) dated 19-10-2006.

Accordingly, if the form is sent by registered post or courier, it should be sent to MCA DIN Cell, A-14, Section 1, PDIL Bhawan, Noida 201301 (UP). If sent by ordinary post, it should be sent to MCA DIN Cell, Post Box No. 3, Noida 201301 (UP).

**Allotment of DIN** - Application received will be scrutinized by Central Government. Its approval or rejection will be communicated by letter of post or electronically, within one month from receipt of application. If application is rejected, it will also be informed to applicant. Status of DIN application can be checked using 'Enquire DIN Approval Status' under DIN link.

**Changes in information furnished** – If there is any change in information supplied while making application in DIN-1 form (e.g. change of address or other particulars), it should be informed to ROC in form DIN-4. This form is to be submitted physically and not electronically. No fees are payable while submitting form DIN-4.

The changes will also be informed to companies of which he is a director. The details will be scrutinized and then incorporated by Central Government in electronic records and will be informed to the Director [rule 7].

**Intimation of DIN to company and by company** – As per requirement of section 266D of Companies Act, every director is required to intimate his Director Identification Number (DIN) with a copy of DIN allotment letter to company where he is director, in form DIN-2 [rule 5].

On receipt of the intimation, company is required to intimate the DIN number of director to ROC within one week u/s 266E. The details are to be submitted in form DIN-3. The form is required to be verified by MD or director or manager of the company. Form No DIN-3 has to be certified by PCS or secretary in wholetime employment of the company.

Filing fees are payable while submitting DIN-3. No filing fees are payable if DIN-3 was submitted prior to 30-6-2007 [rule 6].

In respect of companies registered on or after 1-7-2007, filing of DIN-3 is not required, as the details will be captured through form DIN-1 and form 32 – MCA DO letter No. HQ/86/2006-Computerisation dated 18-6-2007 (see CS July 2007 page 861).

## 12-6 Important e-forms

New e-forms have been notified. Following are some notable changes -

Form 13 is omitted as forms 8, 10 and 17 are themselves sufficient.

Form 20B has been added for filing Annual Return with ROC u/s 159.

Form 23AC has been added for filing balance sheet and other documents with ROC u/s 220. Form 23ACA is for filing of Profit and Loss Account.

Form 29 (consent to act as director) has been omitted and the consent has to be submitted as addendum to form 32.

- ☐ Forms 61 to 66 are added to be used for submission of applications to ROC and Central Government.

**Form 61 for Application to ROC** - In some cases, application is required to be made to ROC e.g. compounding of offenses, extension of period for holding AGM, extension of time for holding AGM, declaring a company as defunct company, amalgamation etc. This application is to be submitted electronically as attachment to form No. 61. Practically, this form is a covering letter.

**Form 62 for submission of documents to ROC** - Various documents are required to be submitted to ROC e.g. statement in lieu of prospectus, altered memorandum or articles, prospectus, return of deposits, secretarial compliance certificate etc. These have to be filed as scanned attachment to form No. 62. Practically, this form is a covering letter.

**Form 21 for submitting Notice of order of Court or CLB** – Various sections require submission of copy of order of Court or CLB to ROC. This is done at

attachment to e-form No. 21.

**Form 24A for applications to RD** – In some cases, application is required to be made to Regional Director e.g. approval for entering into contract u/s 297, appointment of auditor u/s 224(2), issue of license u/s 25, removal of auditor u/s 224(7) and rectification of name. This application is to be submitted electronically in e-form 24A. Practically, this form is a covering letter.

**Form 65 for application to Central Government** – In some cases, application is required to be made to Central Government for approval. Where no form has been prescribed, application is required to be made as attachment to form No. 65. Practically, this form is a covering letter.

**List of prescribed forms** - Following are some important e-forms and other forms.

|                         |                                                                                                                                                                                 |
|-------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Form 1                  | Declaration of Compliance with requirements of Companies Act for registration of company, required u/s 33(1)(2).                                                                |
| Form 1A                 | Application for availability or change of name (section 20 and 21)                                                                                                              |
| Form 1AA                | Particulars of person/director charged for purpose of section 5(f) or (g)                                                                                                       |
| Form 1AD                | Application to Regional Director for change of registered office within the State, if it involves change of jurisdiction of ROC u/s 17A                                         |
| Form 1B                 | Application to Central Government for change of name u/s 21 or 31(1)                                                                                                            |
| Form 2                  | Return of allotment of shares, required u/s 75(1)                                                                                                                               |
| Form 2B<br>(not e-form) | Nomination form (to be filled by shareholder / debenture holder / fixed deposit holder – to be filed with company, not with ROC) (to be submitted physically, not electrically) |
| Form 3                  | Contract relating to shares allotted for consideration otherwise than in cash – section 75(2)                                                                                   |
| Form 4                  | Statement of % of commission payable in respect of shares or debentures – section 76(1) (not to be filed electronically)                                                        |
| Form 4A                 | Declaration of Solvency (if company is planning buy back of securities u/s 77A) – To be submitted as attachment to e-form 62.                                                   |
| Form 4B<br>(not e-form) | Register of securities bought back by a company u/s 77A(9) [Buy Back of Securities] (not to be submitted to ROC) (not to be submitted electronically)                           |
| Form 4C                 | Return relating to buy-back of securities.- section 77A                                                                                                                         |
| Form 5                  | Notice of consolidation/division/increase in share capital – section 95, 97 or 94A(2) or 81(4)                                                                                  |
| Form 7-B                | Share transfer form (To be filed with company, not with ROC) (to                                                                                                                |

|                       |                                                                                                                                                                                                                           |
|-----------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| (not e-form)          | be submitted physically, not electrically)                                                                                                                                                                                |
| Form 7-C (not e-form) | Application for extension of validity of transfer deed – ROC has been authorised to grant extension (to be submitted physically, not electrically)                                                                        |
| Form 8                | Creation of charge and modification of charges required u/ss 125(1), 127(1), 130, 132, 134, 135 and 600                                                                                                                   |
| Form 10               | Particulars for registration of charges for debentures – u/ss 128 and 129                                                                                                                                                 |
| Form 15               | Appointment or cessation of receiver or manager – sections 137 and 600.                                                                                                                                                   |
| Form 17               | Memorandum of complete satisfaction of charges, required u/s 138(1)                                                                                                                                                       |
| Form 18               | Notice of situation of company's registered office and any change of the situation, required u/s 146                                                                                                                      |
| Forms 19 and 20       | Declaration of compliance u/s 149                                                                                                                                                                                         |
| Form 20A              | Declaration regarding commencement of new business, required u/s 149(2A) or 149(2B).                                                                                                                                      |
| Form 20B              | Annual Return u/s 159 (This is new form).                                                                                                                                                                                 |
| Form 21               | Notice of order of NCLT/Court (required under various sections)                                                                                                                                                           |
| Form 21A              | Annual Return of company not having share capital, required u/s 160                                                                                                                                                       |
| Form 22               | Statutory report u/s 165.                                                                                                                                                                                                 |
| Form 22B              | Return pursuant to section 187C(4) (declaration of beneficial interest)                                                                                                                                                   |
| Form 23               | Registration of resolution and agreements. [If more than one resolutions are passed in one meeting, only one return and one filing fee is sufficient], required u/s 192.                                                  |
| Form 23AA             | Notice of address at which books of account are maintained – section 209(1).                                                                                                                                              |
| Form 23AAA            | Application to Central Government for modifications in matters to be stated in Company's balance sheet and P&L account                                                                                                    |
| Form 23AAB            | Application for exemption from attaching annual accounts of subsidiary companies                                                                                                                                          |
| Form 23AAC            | Application for not providing depreciation                                                                                                                                                                                |
| Form 23AC             | Form for filing balance sheet and other documents (excluding Profit and Loss Account) with ROC u/s 220. Notice, Directors' report and auditor's report are to be submitted as attachments to this form (This is new form) |

|                       |                                                                                                                                                                                                                                                       |
|-----------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Form 23ACA            | Form for filing of Profit and Loss Account u/s 220 (This is new form). The form is to be filed alongwith form 23AC. Separate filing fee is not required.                                                                                              |
| Form 23B              | Notice by auditor (informing his appointment as auditor to ROC), required u/s 224(1A)                                                                                                                                                                 |
| Form 23C              | Application for approval of appointment of cost auditor – to be filed with Central Government u/s 233B(2)                                                                                                                                             |
| Form 24               | Application for increase in number of directors of the company                                                                                                                                                                                        |
| Form 24A              | Application to be made to Regional Director for approval/permission etc. (Practically, this is a covering letter)                                                                                                                                     |
| Form 24AB             | Application for giving loan, providing security or guarantee in connection with a loan                                                                                                                                                                |
| Form 24B              | Application for prior consent for holding office of profit – section 314(1B).                                                                                                                                                                         |
| Form 25A              | Approval for appointment and remuneration payable to MD/WD/Manager [sections 198, 269, 309 and 316]                                                                                                                                                   |
| Form 25B              | Application for amending provisions relating to MD, WD or non-rotational director – section 268.                                                                                                                                                      |
| Form 25C              | Return of appointment of MD / WD / Manager, required u/s 269(2) and schedule XIII.                                                                                                                                                                    |
| Form 32 with addendum | Particulars of Appointment of Directors, Manager or Secretary and changes among them – required u/s 303(2), 264(2), 266 (The consent of director is to be submitted as Addendum to form 32, which was previously required to be submitted in form 29) |
| Form 36               | Receivers or Manager's abstract of receipts and payments                                                                                                                                                                                              |
| Form 39               | Conversion of partnership firm into company [sections 565(1), 567(a), 567(c) and 568(a)]                                                                                                                                                              |
| Form 44               | Documents to be filed by foreign company establishing business in India, required u/s 592                                                                                                                                                             |
| Forms 49 and 52       | Returns and Notice by foreign company u/ss 593, 594, 597                                                                                                                                                                                              |
| Form 61               | Form for filing application with ROC (practically, it is a covering letter)                                                                                                                                                                           |
| Form 62               | Form for submitting document with Registrar (except Secretarial Compliance Certificate) (practically, it is a covering letter)                                                                                                                        |
| Forms 63 and 64       | Application for declaration as Nidhi company and application for opening branches by Nidhi company                                                                                                                                                    |
| Form 65               | Form for filing application or document with Central Government (practically, it is a covering letter)                                                                                                                                                |
| Form 66               | Form for filing Secretarial Compliance Certificate                                                                                                                                                                                                    |
| Form 1                | Statement of amounts credited to Investor Education and Protection Fund by company                                                                                                                                                                    |

|                         |                                                                                                                                                                                                                                                                                                                             |
|-------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Investor complaint form | Form for filing complaint/s against company                                                                                                                                                                                                                                                                                 |
| Forms I and II          | Appointment of Sole Agents                                                                                                                                                                                                                                                                                                  |
| Forms DD-B and DD-C     | Return by company in respect of disqualification of director u/s 274(1)(g) and application for removal of disqualification of a director                                                                                                                                                                                    |
| Cost Audit Report       | Form pursuant to section 233B(4) and cost Audit (Report) Rules.                                                                                                                                                                                                                                                             |
| DIN-1                   | Application by director to obtain DIN                                                                                                                                                                                                                                                                                       |
| DIN-2                   | Intimation of DIN by director to company u/s 266D                                                                                                                                                                                                                                                                           |
| DIN-3                   | Intimation by company to ROC of DIN of director u/s 266E (required in case of companies incorporated upto 30-6-2007. In case of companies incorporated on or after 1-7-2007, details will be captured through DIN-1 and form 32 – MCA DO letter No. HQ/86/2006-Computerisation dated 18-6-2007 (see CS July 2007 page 861). |
| DIN-4                   | Intimation by director to Central Government of changes in address or other particulars (to be submitted physically and not electronically).                                                                                                                                                                                |

|                                     |                                   |                                 |                                        |
|-------------------------------------|-----------------------------------|---------------------------------|----------------------------------------|
| <b><u>Central Excise primer</u></b> | <b><u>Customs Law primer</u></b>  | <b><u>Income Tax primer</u></b> | <b><u>Central Sales Tax primer</u></b> |
| <b><u>Labour Laws</u></b>           | <b><u>Inventory Valuation</u></b> | <b><u>Some useful sites</u></b> | <b><u>Students Special</u></b>         |
| <b><u>Corporate Laws</u></b>        | <b><u>Service Tax primer</u></b>  | <b><u>Mr Datey's Books</u></b>  |                                        |