Chapter-5
Meeting Of Board And Its Power

5.1 INTRODUCTION

(1) Two main organs, the shareholders in general meetings and the directors acting as a Board conduct the affairs of a company.

(2) Therefore, directors frequently meet up to discuss various matters relating to the management and administration of the affairs of the company in the interest of the public and the shareholders.

(3) The modern practice is to confer upon the directors the right to exercise all company's powers except for those matters, which are by law required to be exercised by the company in general meeting.

(4) The Board of directors oversees management of the company to ensure that the interests of shareholders are protected.

5.2 MEETINGS OF BOARD (SECTION 173 OF THE COMPANIES ACT, 2013)

- A new section 173 of the Companies Act, 2013 came into force from 1^{st} April, 2014 which provides for Meetings of Board. According to this section:

(1) Frequency of Board Meetings [Section 173 (1)]:

(a) First Board meeting:

- Every company shall hold the first meeting of the Board of Directors within 30 days of the date of its Incorporation.

(b) Subsequent Board meetings:

- Every company shall hold minimum of 4 meetings every year provided that the gap between two consecutive board meetings shall not be more than 120 days.
- However, the Central Government may by notification, direct that these provisions will not apply in relation to any class or descriptions of companies or will apply in relation thereto subject to such exceptions, modifications or conditions as may be specified in the notification.

(2) Participation in Board meeting [Section 173 (2)]:

(a) Sub section (2) of section 173 allows directors to attend Board meetings,

(i) In person, or,

(ii) through video conferencing, or,

(iii) other audio visual means as may be prescribed.

(b) Such audio visual means should be capable of recording and recognising the participation of the directors and of recording and storing the proceedings of such meetings along with date and time.

(c) However, the Central Government may by notification specify such matters which shall not be dealt with in a meeting through video conferencing and other audio visual means.

- "Video conferencing or other audio visual means" means audio-visual electronic communication facility employed which enables all the persons participating in a meeting to communicate concurrently with each other without an intermediary and to participate effectively in the meeting.

(d) Some of the key points related to meetings of Board that are held through conferencing or other audio visual means, as provided in the Companies (Meetings of Board and its Powers) Rules, 2014 are as under:

(i) Every Company shall make necessary arrangements to avoid failure of video or audio visual connection.

(ii) The Chairperson of the meeting and the company secretary, if any, shall take due and reasonable care-

- to safeguard the integrity of the meeting by ensuring sufficient security and identification procedures;
- to ensure availability of proper video conferencing or other audio visual equipment or facilities for providing transmission of the communications for effective participation of the directors and other authorised participants at the Board meeting;
- to record proceedings and prepare the minutes of the meeting;
- to store for safekeeping and marking the tape recording(s) or other electronic recording mechanism as part of the records of the company at least before the time of completion of audit of that particular year.
- to ensure that no person other than the concerned director are attending or have access to the proceedings of the meeting through video conferencing mode or other audio visual means;
- to ensure that participants attending the meeting through audio visual means are able to hear and see the other participants clearly during the course of the meeting.

- However, the differently abled persons may make a request to the Board to allow a person to accompany him.

(iii) The notices of the meeting shall be sent to all the directors in accordance with the provisions of Section 173 (3) of the Act;

(iv) Process of a roll call at the Board Meeting:

- A director participating in a meeting through video conferencing or other audio visual means shall be counted for the purpose of quorum, unless he is to be excluded for any items of business under any provisions of the Act or the rules.

(v) The scheduled venue of the meeting as mentioned in the notice convening the meeting, shall be deemed to be the venue of the meeting which is conducted through video conferencing or other audio visual means authorized under these rules and all recordings at such meeting shall be deemed to have been made at that place.

(vi) The draft minutes of the meeting shall be circulated among all the directors within 15 days of the meeting either in writing or in electronic mode as may be decided by the Board.

- Matters not to be dealt with in a meeting through video conferencing or other audio visual means as provided in the Companies (Meetings of Board and its Powers) Rules, 2014 are as under:
- the approval of the annual financial statements;
- the approval of the Board's report;
- the approval of the prospectus;

- the Audit Committee Meetings for consideration of financial statement including consolidated financial statement, if any, to be approved by the Board under sub-section (1) of section 134 of the Act; and
- the approval of the matter relating to amalgamation, merger, demerger acquisition and takeover.

(3) Notice of the Board meeting [Section 173 (3)]:

(a) According to section 173(3), every board meeting shall be called by giving at least 7 days notice in writing to all the directors at their registered address (whether in India or outside India). The notice may be sent by hand delivery or by post or by electronic means.

(b) Provided that a meeting of the Board of Directors may be called on a shorter notice (than 7 days) in order to transact on urgent business, subject to the condition that at least one independent director, if any, shall be present at the meeting.

(c) If no independent director is present at such a meeting of the Board then the decisions taken at such a meeting shall be circulated to all the directors and shall be final only on ratification thereof by at least one independent director, if any.

(d) The Companies (Meetings of Board and its Powers) Rules, 2014 further provides that the notice of the meeting shall inform the directors regarding the option available to them to participate through video conferencing mode or other audio visual means, and shall provide all the necessary information to enable the directors to participate through video conferencing mode or other audio visual means.

(e) On receiving such a notice, a director intending to participate through video conferencing or audio visual means shall communicate his intention to the Chairperson or the company secretary of the company. He shall give prior intimation to that effect sufficiently in advance so that the company is able to make suitable arrangements in this behalf.

(f) If the director does not give any intimation of his intention to participate that he wants to participate through the electronic mode, it shall be assumed that the director shall attend the meeting in person.

(4) Penalty for failure to give notice:

- The Act under section 173(4) has prescribed a penalty of ₹ 25,000 on every officer of the Company whose duty is to give notice under this section and who has failed to do so.

(5) Exceptions [Section 173(5)]:

(a) A One Person Company, small company and dormant company shall be deemed to have complied with the provisions of section 173 if at least one meeting of the Board of Directors has been conducted in each half of a calendar year and the gap between the two meetings is not less than 90 days.

(b) Provided that, a One Person Company in which there is only one director on its Board of Directors shall not be required to hold at least one Board meeting in each half of a calendar year. Thus, it is exempt from following the provisions of section 173(5).

- For further details related to "Meetings of Board through video conferencing or other audio visual means", refer the Companies (Meetings of Board and its Powers) Rules, 2014.

5.3 QUORUM FOR MEETINGS OF BOARD (SECTION 174 OF THE COMPANIES ACT, 2013)

(1) A quorum is the minimum number of qualified persons who must attend in order to transact business at a duly convened Board meeting.

(2) A meeting shall not be deemed to have been properly held unless the quorum was present at that meeting.

(3) A new section 174 of the Companies Act, 2013 came into force from 1st April, 2014 which provides for Quorum for meetings of Board. According to this section:

(a) The quorum for a Board Meeting shall be one-third of its total strength or two directors, whichever is higher.

(b) The directors who participate by video conferencing or by other audio visual means shall also be counted for the purpose of determining the quorum at the meeting.

- Further, the explanation as given in the Companies (Meetings of Board and its Powers) Rules, 2014 provides that the a director participating in a meeting through video conferencing or other audio visual means shall be counted for the purpose of quorum, unless he is to be excluded for any items of business under any provisions of the Act or the rules.

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

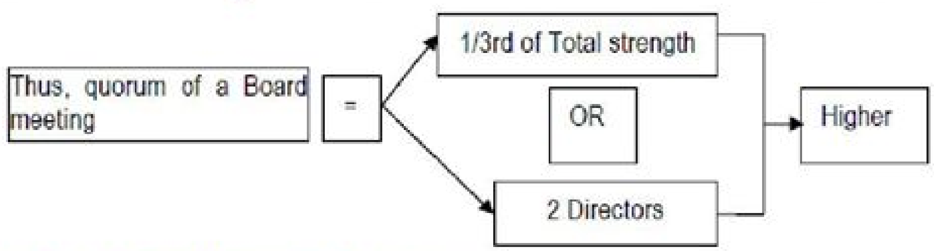
(d) Where at any time the number of interested directors exceeds or is equal to two- thirds of the total strength of the Board of Directors, the quorum shall be the number of directors who are present at the meeting and not interested directors and are not be less than 2.

(e) "Interested director" for the purposes of this sub section means a director within the meaning of section 184 (2). Under Section 184(2) "interested director" means every director of a company who is in any way, whether directly or indirectly, concerned or interested in a contract or arrangement or proposed contract or arrangement entered into or to be entered into—

(i) with a body corporate in which such director or such director in association with any other director, holds more than two per cent shareholding of that body corporate, or is a promoter, manager, Chief Executive Officer of that body corporate; or

(ii) with a firm or other entity in which, such director is a partner, owner or member, as the case may be, shall disclose the nature of his concern or interest at the meeting of the Board in which the contract or arrangement is discussed and shall not participate in such meeting:

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



(f) Meeting could not be held for want of quorum:

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

Notes:

(i) The provisions of section 174 are not applicable on One Person Company in which there is only one director on its Board of directors.

(ii) For the purpose of calculating quorum, any fraction of a number shall be rounded off as one

(iii) "Total strength" shall not include directors whose places are vacant.

5.4 PASSING OF RESOLUTION BY CIRCULATION (SECTION 175 OF THE COMPANIES ACT, 2013)

- A new section 175 of the Companies Act, 2013 came into force from 1st April, 2014 which provides for Passing of resolution by circulation. According to this section:

(1) The Act allows the Board of directors to pass resolution by Circulation also. No resolution shall be deemed to have been duly passed by the Board or by a committee thereof by circulation unless:

(a) The resolution has been circulated in draft, together with the necessary papers, if any, to all the directors, or members of the committee, as the case may be,

(b) at their addresses registered with the company in India,

(c) by hand delivery or

(d) by post or by courier, or

(e) through such electronic means as may be prescribed, and

(f) and has been approved by a majority of the directors or members, who are entitled to vote on the resolution.

- The Companies (Meetings of Board and its Powers) Rules, 2014 provides that a resolution in draft form may be circulated to the directors together with the necessary papers for seeking their approval, by electronic means which may include E-mail or fax.

(2) If at least 1/3rd of third of the total number of directors of the company for the time being require that any resolution under circulation must be decided at a meeting, the chairperson shall put the resolution to be decided at a meeting of the Board (instead of being decided by circulation).

(3) A resolution that has been passed by circulation shall have to be necessarily be noted in the next meeting of board or the committee, as the case may be, and made part of the minutes of such meeting.

5.5 DEFECTS IN APPOINTMENT OF DIRECTORS NOT TO INVALIDATE ACTIONS TAKEN (SECTION 176 OF THE COMPANIES ACT, 2013)

- A new section 176 of the Companies Act, 2013 came into force on 12th September, 2013 which provides for Defects in appointment of directors not to invalidate actions taken. According to this section:

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

(2) Nothing in this section shall be deemed to give validity to any act done by the director after his appointment has been noticed by the company to be invalid or to have terminated.

5.6 AUDIT COMMITTEE (SECTION 177 OF THE COMPANIES ACT, 2013)

- A new section 177 of the Companies Act, 2013 came into force from 1st April, 2014 which provides for Audit committee. According to this section:

(1) Formation of an Audit Committee:

- An audit committee shall be constituted by the Board of directors of:

(a) Every listed company, and

(b) Such other class or classes of companies as may be prescribed.

- The Companies (Meetings of Board and its Powers) Rules, 2014 have prescribed-
- The following classes of companies that shall constitute Audit Committee:

(i) all public companies with a paid up capital of 10 crore rupees or more;

(ii) all public companies having turnover of 100 crore rupees or more;

(iii) all public companies, having in aggregate, outstanding loans or borrowings or debentures or deposits exceeding 50 crore rupees or more.

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

(d) "Provided that public companies covered under this rule which were not required to constitute Audit Committee under section 292A of the Companies Act, 1956 shall constitute their Audit Committee within one year from the commencement of these rules or appointment of independent directors by them, whichever is earlier:

(e) Provided further that public companies covered under this rule shall constitute their Nomination and Remuneration Committee within one year from the commencement of these rules or appointment of independent directors by them, whichever is earlier".

(2) Composition of an Audit committee:

(a) According to sub section 2 of section 177, the Audit Committee shall consist of a minimum of 3 directors with independent directors forming a majority.

(b) Provided that the majority of members of Audit Committee including its Chairperson shall be persons with ability to read and understand the financial statement.

(c) Disclosure of composition of Audit Committee: The composition of the Audit Committee shall be disclosed in the Board's report under Section 134(3).

(3) Transition period:

- This Act shall, within one year of such commencement, be reconstituted in accordance with the new composition of an Audit Committee as provided for in sub section (2) above.

(4) Responsibilities of an Audit Committee:

- According to sub section (4) of section 177, every Audit Committee shall act in accordance with the terms of reference specified in writing by the Board which shall, inter alia, include,—

(a) the recommendation for appointment, remuneration and terms of appointment of auditors of the company;

(b) review and monitor the auditor's independence and performance, and effectiveness of audit process;

(c) examination of the financial statement and the auditors' report thereon;

(d) approval or any subsequent modification of transactions of the company with related parties;

(e) scrutiny of inter-corporate loans and investments;

(f) valuation of undertakings or assets of the company, wherever it is necessary;

(g) evaluation of internal financial controls and risk management systems;

(h) monitoring the end use of funds raised through public offers and related matters.

(5) Investigation by Audit Committee:

- According to sub section (6) of section 177, the Audit Committee shall have authority to investigate into any matter in relation to the items specified in sub-section (4) or referred to it by the Board and for this purpose shall have power to obtain professional advice from external sources and have full access to information contained in the records of the company.

(6) Disclosure in Board's report:

(a) The composition of the Audit Committee shall be disclosed in the Board's report under section 134(3).

(b) Where the Board had not accepted any recommendation of the Audit Committee, the same shall be disclosed in Board's report under section 134(3), along with the reasons therefor.

(7) Role of auditor in Audit Committee:

(a) According to section 177(5), the Audit Committee is empowered to:

(i) call for the comments of the auditors about:

- internal control systems,
- the scope of audit, including the observations of the auditors,
- review of financial statement before their submission to the Board,

(ii) discuss any related issues with the internal and statutory auditors and the management of the company.

(b) Right to be heard in the meeting of Audit Committee:

- According to section 177(7), the auditors of a company and the key managerial personnel shall have a right to be heard in the meetings of the Audit Committee when it considers the auditor's report but shall not have the right to vote.

(8) Penalty for contravention [Section 178(8)]:

(a) The company shall be punishable with fine which shall not be less than 1 lakh rupees but which may extend to 5 lakh rupees, and,

(b) every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to 1 year or with fine which shall not be less than 25,000 rupees but which may extend to 1 lakh rupees, or with both.

(9) Vigil mechanism:

(a) Formation of vigil mechanism[Section 177(9)]:

- A Vigil mechanism shall be formed in:

(i) Every listed company, and

(ii) Such other prescribed classed of companies.

- The Companies (Meetings of Board and its Powers) Rules, 2014 has prescribed the following classes of companies that shall constitute Vigil mechanism:

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

(ii) the Companies which have borrowed money from banks and public financial institutions in excess of 50 crore rupees.

(b) Objective of formation of vigil mechanism:

(i) A vigil mechanism shall be formed for directors and employees to report genuine concerns in such manner as may be prescribed.

(ii) The vigil mechanism shall provide for adequate safeguards against victimisation of persons who use such mechanism and make provision for direct access to the chairperson of the Audit Committee in appropriate or exceptional cases. It is imperative for the company to disclose the details of the establishment of vigil mechanism on the website of the company and in Board's report.

- According to the Companies (Meetings of Board and its Powers) Rules, 2014:
  - "Persons who use such mechanism" means employees and directors who avail the vigil mechanism.
  - The companies which are required to constitute an audit committee shall oversee the vigil mechanism through the committee and if any of the members of the committee have a conflict of interest in a

given case, they should recuse themselves and the others on the committee would deal with the matter on hand.

- In case of other companies, the Board of directors shall nominate a director to play the role of audit committee for the purpose of vigil mechanism to whom other directors and employees may report their concerns.
- The employees and directors who avail of vigil mechanism may have direct access to the Chairperson of the Audit Committee or the director nominated to play the role of Audit Committee, as the case may be, in exceptional cases.
- In case of repeated frivolous complaints being filed by a director or an employee, the audit committee or the director nominated to play the role of audit committee may take suitable action against the concerned director or employee including reprimand.

(c) Penalty for contravention [Section 178(8)]:

- Same as penalty mentioned in the topic of Audit Committee i.e as per Section 178 (8).

5.7 NOMINATION AND REMUNERATION COMMITTEE AND STAKEHOLDERS RELATIONSHIP COMMITTEE (SECTION 178 OF THE COMPANIES ACT, 2013)

- A new Section 178 of the Companies Act, 2013 came into force from 1st April, 2014 which provides for Nomination and Remuneration Committee and Stakeholders Relationship Committee. According to this section:
- Sections 178 (1) to (4) lay down the provisions in respect of the Nomination and Remuneration Committee as under:

(1) Nomination and Remuneration Committee

(a) Formation of nomination and remuneration committee:

(i) A nomination and remuneration committee shall be constituted by the Board of directors of:

- Every listed company, and
- Such other class or classes of companies as may be prescribed.

(ii) The Companies (Meetings of Board and its Powers) Rules, 2014 has prescribed the following classes of companies that shall constitute Nomination and Remuneration Committee of the Board:

- all public companies with a paid up capital of ten crore rupees or more;
- all public companies having turnover of one hundred crore rupees or more;
- all public companies, having in aggregate, outstanding loans or borrowings or debentures or deposits exceeding fifty crore rupees or more.

(iii) Explanation.-

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

(iv) "Provided that public companies covered under this rule which were not required to constitute Audit Committee under section 292A of the Companies Act, 1956 shall constitute their Audit Committee within one year from the commencement of these rules or appointment of independent directors by them, whichever is earlier:

(v) Provided further that public companies covered under this rule shall constitute their Nomination and Remuneration Committee within one year from the commencement of these rules or appointment of independent directors by them, whichever is earlier

(b) Composition of nomination and remuneration committee:

(i) This committee shall consist of 3 or more non-executive directors out of which not less than one-half shall be independent directors.

(ii) The Chairman (whether executive or non-executive) of the company shall not chair such a committee. However, he may be appointed as a member to the committee.

(iii) The chairperson or in his absence, any other member of the committee authorised by him in this behalf shall attend the general meetings of the company.

(c) Constitution of the committee [Section 178 (2)]:

- The Nominations and Remuneration Committee shall-

(i) identify persons who are qualified to become directors and who may be appointed in senior management in accordance with the criteria laid down.

(ii) recommend to the Board their appointment and removal of directors and senior management carry out evaluation of every director's performance.

(d) Powers of Committee regarding the remuneration [Section 178(3)]:

- The Nominations and Remuneration Committee shall formulate the criteria for determining qualifications; positive attributes and independence of a director recommend to the Board a policy, relating to the remuneration for the directors, key managerial personnel and other employees.

(e) Policy forming by remuneration committee [Section 178(4)] :

- According to section 178(4), the Nomination and Remuneration Committee shall, while formulating the policy under sub-section (3) of section 178 ensure that—

(i) the level and composition of remuneration is reasonable and sufficient to attract, retain and motivate directors of the quality required to run the company successfully;

(ii) relationship of remuneration to performance is clear and meets appropriate performance benchmarks; and

(iii) remuneration to directors, key managerial personnel and senior management involves a balance between fixed and incentive pay reflecting short and long-term performance objectives appropriate to the working of the company and its goals.

- It is imperative to disclose such a policy in Board's Report.

(f) Penalty for contravention:

- Same as penalty mentioned in the topic of Audit Committee i.e as per Section 178 (8).

(2) Stakeholders Relationship Committee [Section 178 (5) and (6)]:

(a) Formation and constitution of stakeholder's relationship committee:

- The Board of Directors of a company which consists of more than 1000 shareholders, debenture-holders, deposit-holders and any other security holders at any time during a financial year shall constitute a Stakeholders Relationship Committee.

(b) Objective of the committee:

- The Stakeholders Relationship Committed shall consider and resolve the grievances of security holders of the company. This committee shall protect the interests of all security holders, not merely the equity investors.

(c) Chairperson of stakeholder's relationship committee:

(i) It shall be headed by a chairperson who shall be a non-executive director and consist of such other members as may be decided by the Board.

(ii) Section 178 (7) provides that the chairperson of each of the above committees constituted under this section or, in his absence, any other member of the committee authorised by him in this behalf shall attend the general meetings of the company.

(iii) Section 178 (8) provides for the penalty for contravention of any of the provisions of either section 177 or 178 and has been explained above (after section 177).

(iv) Provided that the non-consideration of a resolution of any grievance by the Stakeholders Relationship Committee in good faith shall not constitute a contravention of Section 178.

(v) Here, for the purposes of Section 178, the expression "senior management" means personnel of the company who are members of its core management team excluding Board of Directors comprising all members of management one level below the executive directors, including the functional heads.

(d) Penalty for contravention:

- Same as penalty mentioned in the topic of Audit Committee i.e as per Section 178 (8).

5.8 POWERS OF BOARD (SECTION 179 OF THE COMPANIES ACT, 2013)

- A new Section 179 of the Companies Act, 2013 came into force from 1st April, 2014 which provides for Powers of Board. According to this section:

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

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

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

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

(4) Powers of the Board to be exercised by the Board by means of the resolution passed at a duly convened Board meeting:

(a) to make calls on shareholders in respect of money unpaid on their shares;

(b) to authorise buy-back of securities under section 68;

(c) to issue securities, including debentures, whether in or outside India;

(d) to borrow monies;

(e) to invest the funds of the company;

(f) to grant loans or give guarantee or provide security in respect of loans;

(g) to approve financial statement and the Board's report;

(h) to diversify the business of the company;

(i) to approve amalgamation, merger or reconstruction;

(j) to take over a company or acquire a controlling or substantial stake in another company;

(k) any other matter which may be prescribed

(5) Additionally, the Companies (Meetings of Board and its Powers) Rules, 2014 has prescribed certain more powers that shall also be exercised by the Board of Directors only by means of resolutions passed at meetings of the Board:

(a) to make political contributions;

(b) to appoint or remove KMP

(c) to take note of appointment(s) or removal(s) of one level below the Key Management Personnel;

(d) to appoint internal auditors and secretarial auditor;

(e) to take note of the disclosure of director's interest and shareholding;

(f) to buy, sell investments held by the company (other than trade investments), constituting 5% or more of the paid up share capital and free reserves of the investee company;

(g) to invite or accept or renew public deposits and related matters;

(h) to review or change the terms and conditions of public deposit;

(i) to approve quarterly, half yearly and annual financial statements or financial results as the case may be.

(6) Power to delegate certain powers of the Board:

- The Board may, by a resolution passed at a meeting, delegate the powers specified in points (d) to (f) above, on such conditions as it may specify to:

(a) any committee of directors,

(b) the managing director,

(c) the manager or any other principal officer of the company, or

(d) the principal officer of the branch office (in the case of a branch office of the company).

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

(8) Explanation I -

- Nothing in point (d) above shall apply to borrowings by a banking company from other banking companies or from the Reserve Bank of India, the State Bank of India or any other banks established by or under any Act.

(9) Explanation II –

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

(10) Nothing in this section shall however be deemed to affect the right of the company in the general meeting, to impose restriction and conditions on the exercise by the Board of any of the powers specified in this section above.

5.9 RESTRICTIONS ON POWERS OF BOARD (SECTION 180 OF THE COMPANIES ACT, 2013)

- A new section 180 of the Companies Act, 2013 came into force on 12th September, 2013 which provides for Restrictions on powers of Board. According to this section:

(1) The Board of Directors of a company shall exercise the following powers only with the consent of the company by a special resolution, namely:—

(a) To sell, lease or otherwise dispose of the whole or substantially the whole of the undertaking of the company or where the company owns more than one undertaking, of the whole or substantially the whole of any of such undertakings.

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

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

(b) To invest otherwise in trust securities the amount of compensation received by it as a result of any merger or amalgamation;

(c) To borrow money, where the money to be borrowed, together with the money already borrowed by the company will exceed aggregate of its paid-up share capital and free reserves, apart from temporary loans obtained from the company's bankers in the ordinary course of business.

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

(ii) "Temporary loans" means loans repayable on demand or within six months from the date of the loan such as short-term, cash credit arrangements, the discounting of bills and the issue of other short-term loans of a seasonal character, but does not include loans raised for the purpose of financial expenditure of a capital nature;

(d) To remit, or give time for the repayment of, any debt due from a director.

(2) Every special resolution passed by the company in general meeting in relation to the exercise of the powers referred to in point (c) above shall specify the total amount up to which monies may be borrowed by the Board of Directors.

(3) Nothing contained in above point (a) shall affect—

(a) the title of a buyer or other person who buys or takes on lease any property, investment or undertaking as is referred to in that clause, in good faith; or

(b) The sale or lease of any property of the company where the ordinary business of the company consists of, or comprises, such selling or leasing.

(4) Any special resolution passed by the company consenting to the transaction as is referred to in above point (a) may stipulate such conditions as may be specified in such resolution, including conditions regarding the use, disposal or investment of the sale proceeds which may result from the transactions.

Provided that, this sub section shall not be deemed to authorise the company to effect any reduction in its capital except in accordance with the provisions contained in this Act.

(5) No debt incurred by the company in excess of the limit imposed by above point (c) shall be valid or effectual, unless the lender proves that he advanced the loan in good faith and without knowledge that the limit imposed by that clause had been exceeded.

> The MCA vide General Circular No. 15/2013 dated 13th September, 2013 has clarified that in respect of requirements of special resolution under Section 180 of the said Act, as against ordinary resolution required by the Companies Act 1956, if notice for any such general meeting was issued prior to 12th September, 2013, then such resolution may be passed in accordance with the requirement of the Companies Act 1956.

5.10 COMPANY TO CONTRIBUTE TO BONA FIDE AND CHARITABLE FUNDS, ETC. (SECTION 181 OF THE COMPANIES ACT, 2013)

- A new Section 181 of the Companies Act, 2013 came into force on 12th September, 2013 which provides for Company to contribute to bona fide and charitable funds, etc. According to this section:

(1) The Board of Directors of a company may contribute to bona fide charitable and other funds.

(2) Prior permission of the company in general meeting shall be required for such contribution in case any amount the aggregate of which, in any financial year, exceeds five per cent of its average net profits for the three immediately preceding financial years.

5.11 PROHIBITIONS AND RESTRICTIONS REGARDING POLITICAL CONTRIBUTIONS (SECTION 182 OF THE COMPANIES ACT, 2013)

- A new section 182 of the Companies Act, 2013 came into force on 12th September, 2013 which provides for Prohibitions and restrictions regarding political contributions. According to this section:

(1) Notwithstanding anything contained in any other provision of this Act, a company may contribute any amount directly or indirectly to any political party. Here, "political party" means a political party registered under section 29A of the Representation of the People Act, 1951.

(2) The following companies are not allowed to contribute to any political party:

(a) a Government company; and

(b) a company which has been in existence for less than three financial years.

(3) The aggregate of the amount which may be so contributed by the company in any financial year shall not exceed seven and a half per cent. of its average net profits during the three immediately preceding financial years.

(4) No such contribution shall be made by a company unless a resolution authorising the making of such contribution is passed at a meeting of the Board of Directors and such resolution shall be deemed to be justification in law for the making and the acceptance the contribution authorised by it.

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

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

(b) the amount of expenditure incurred, directly or indirectly, by a company on an advertisement in any publication, being a publication in the nature of a souvenir, brochure, tract, pamphlet or the like, shall also be deemed,—

(i) where such publication is by or on behalf of a political party, to be a contribution of such amount to such political party, and

(ii) where such publication is not by or on behalf of, but for the advantage of a political party, to be a contribution for a political purpose.

(6) Every company shall disclose in its profit and loss account any amount or amounts contributed by it to any political party during the financial year to which that account relates, giving particulars of the total amount contributed and the name of the party to which such amount has been contributed. [Section 182(3)]

(7) If a company makes any contribution in contravention of the provisions of this section, the company shall be punishable with fine which may extend to five times the amount so contributed and every officer of the company who is in default shall be punishable with imprisonment for a term which may

extend to six months and with fine which may extend to five times the amount so contributed.

The MCA vide General Circular 19/ 2013 dated 10th December 2013, issued a clarification on disclosures to be made under section 182 relating to 'Prohibition and restrictions regarding political contributions' of the Companies Act, 2013.

The circular says that, with the coming into force of the scheme relating to 'Electoral Trust Companies' under the Income Tax Act, 1961 read with Ministry of Finance Notification No.

S.O. 309(E) dated 31st January, 2013, it will be expedient to explain the requirements of disclosure on part of a company of any amount or amounts contributed by it to any political parties under section 182(3) of the Companies Act, 2013.

The Ministry hereby clarifies that:

(i) Companies contributing any amount or amounts to an 'Electoral Trust Company' for contributing to a political party or parties are not required to make disclosures required under section 182(3) of Companies Act 2013. It will be sufficient, if the Accounts of the company disclose the amount released to an Electoral Trust Company.

(ii) Companies contributing any amount or amounts directly to a political party or parties will be required to make the disclosures laid down in section 182(3) of the Companies Act, 2013.

(iii) Electoral trust companies will be required to disclose all amounts received by them from other companies/ sources in their Books of Accounts and also disclose the amount or amounts contributed by them to a political party or parties as required by section 182(3) of Companies Act, 2013.

5.12 POWER OF BOARD AND OTHER PERSONS TO MAKE CONTRIBUTIONS TO NATIONAL DEFENCE FUND, ETC. (SECTION 183 OF THE COMPANIES ACT, 2013)

- A new section 183 of the Companies Act, 2013 came into force on 12th September, 2013 which provides for Power of Board and other persons to make contributions to national defence fund, etc. According to this section:

(1) The Board of Directors of any company or any person or authority exercising the powers of the Board of Directors of a company, or of the company in general meeting, may, notwithstanding anything contained in sections 180, 181 and section 182 or any other provision of this Act or in the memorandum, articles or any other instrument relating to the company, contribute such amount as it thinks fit to the National Defence Fund or any other Fund approved by the Central Government for the purpose of national defence.

(2) Every company shall disclose in its profits and loss account the total amount or amounts contributed by it to the Fund referred to in point (i) as specified above, during the financial year to which the amount relates.

5.13 DISCLOSURE OF INTEREST BY DIRECTOR (SECTION 184 OF THE COMPANIES ACT, 2013)

- A new section 184 of the Companies Act, 2013 came into force from 1st April, 2014 which provides for Disclosure of interest by director. According to this section:
- Section 184 is applicable on all directors of the company and all types of Companies.

(1) When to disclose:

- Every director shall:

(a) At the First meeting of the Board in which he participates as a director, and

(b) Thereafter, at the first meeting of the Board in every financial year, or

(c) Whenever there is any change in the disclosures already made, then at the first Board meeting held after such change.

(2) What to disclose:

- Every director shall disclose his concern or interest in any company or companies or bodies corporate, firms, or other association of individuals which shall include the shareholding, in such manner as may be prescribed.
- The Companies (Meetings of Board and its Powers) Rules, 2014 has prescribed that the directors shall disclose his concern or interest, by giving a notice in writing.

(3) Circumstances in which disclosure is necessary:

(a) Whenever any director of a company who is in any way, whether directly or indirectly, concerned or interested in a contract or arrangement or proposed contract or arrangement entered into or to be entered into shall disclose the nature of his concern or interest at the meeting of the Board in which the contract or arrangement is discussed and shall not participate in such meeting.

(b) Following are the circumstances where disclosure is necessary:Whenever any director of the company, who is in any way, whether directly or indirectly, concerned or interested in a contract or arrangement or proposed contract or arrangement entered into or to be entered into—

(i) with a body corporate in which such director or such director in association with any other director, holds more than two per cent. shareholding of that body corporate, or is a promoter, manager, Chief Executive Officer of that body corporate; or

(ii) with a firm or other entity in which, such director is a partner, owner or member, as the case ma

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

(4) Consequences of non disclosure:

(a) Voidable at the option of company:

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

(b) Penalty:

- If a director of the company contravenes the provisions of sub-section (1) or subsection (2) of section 184, such director shall be punishable with-

(i) imprisonment for a term which may extend to one year or

(ii) fine which shall not be less than fifty thousand rupees but which may extend to one lakh rupees, or

(iii) both

(5) No restriction on directors:

- Nothing in Section 184 shall be taken to prejudice the operation of any rule of law restricting a director of a company from having any concern or interest in any contract or arrangement with the company.

(6) Exception :