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CA Club India -Experts Query Daily Digest: 08 September 2017-09-09-

My views based on my reading and interpretation of the legal position

Audit

1. **Mat - by Abdul Rahim E A**

Sir, i have an unabsorbed depreciation in book which was already claimed (which unabsorbed depreciation was lower than business loss) in deduction from MAT in the Previous year, Can i claim the same in subsequent year for deducting from MAT?????

Under MAT, every company whose income tax payable is lower than 18 ½ % of the book profits, then the book profits shall be treated as total income of the assessee and income tax will be payable at 18 ½ % of such book profits.

Sub section (2) of the section 115JB requires the Statement of Profit and Loss to be prepared in accordance with the provisions of Schedule III to the Companies Act 2013.

Explanation 1 to this section provides that the book profit shall be computed as per the following formula:

Profits shown in the Statement of Profit and Loss computed under sub section 2 as increased by items referred to clauses (a) to (k) if they are debited to Statement of Profit or loss and as reduced by clauses (i) to (viii) if they are not credited to Statement of profit and loss.

Clause (g) refers to depreciation debited to Statement of Profit and loss and Clause (iia) refers to the amount of depreciation debited to the 67[statement of profit and loss] (excluding the depreciation on account of revaluation of assets) an

Thus depreciation debited to Statement of Profit and Loss shall not have any effect in computation of the Book Profits except to the extent of Depreciation computed on account of revaluation of assets which shall increase the Book Profits to that extent.

Clause (2A) of 115JB applies to companies which are required to present their Financial Statements as per Indian Accounting Standards specified under Companies (Indian Accounting standards) Rules, 2015

Now coming to the unabsorbed depreciation, subsection (3) states that nothing contained in sub-section (1) shall affect the determination of the amounts in relation to the relevant previous year to be carried forward to the subsequent year or years under the provisions of sub-section (2) of section 32 or sub-section (3) of section 32A or clause (*ii*) of sub-section (1) of section 72 or section 73 or section 74 or sub-section (3) of section 74A.

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According to section 32(2) ,Where, in the assessment of the assessee, full effect cannot be given to any allowance under sub-section (1) in any previous year, owing to there being no profits or gains chargeable for that previous year, or owing to the profits or gains chargeable being less than the allowance, then, subject to the provisions of sub-section (2) of section 72 and sub-section (3) of section 73, the allowance or the part of the allowance to which effect has not been given, as the case may be, shall be added to the amount of the allowance for depreciation for the following previous year and deemed to be part of that allowance, or if there is no such allowance for that previous year, be deemed to be the allowance for that previous year, and so on for the succeeding previous years.

Under section 72 (2) Where any allowance or part thereof is, under sub-section (2) of section 32 or sub-section (4) of section 35, to be carried forward, effect shall first be given to the provisions of this section.

And under section 72 (3) No loss (other than the loss referred to in the proviso to sub-section (1) of this section) shall be carried forward under this section for more than eight assessment years immediately succeeding the assessment year for which the loss was first computed.

Thus the unabsorbed depreciation shall be carried forward indefinitely to succeeding assessment years till it is fully absorbed.

Under computation of income tax on book profits based on the provisions of section 115JB, there is no allowance available to unabsorbed depreciation.

The computational methods should follow the Explanation 1 to section 115JB (1) and (2)

Tax audit when - by Amandeep Singh

When we have to do tax audit and what is requirement / preparation

Audit of accounts of certain persons carrying on business or profession.

44AB. [32]every person,—

(*a*) carrying on business shall, if his total sales, turnover or gross receipts, as the case may be, in business exceed or exceeds one crore rupees in any previous year ; or

(*b*) carrying on profession shall, if his gross receipts in profession exceed [33][*fifty*] lakh rupees in any previous year; or

(*c*) carrying on the business shall, if the profits and gains from the business are deemed to be the profits and gains of such person under section 44AE or section 44BB or section 44BBB, as the case may be, and he has claimed his income to be lower than the profits or gains so deemed to be the profits and gains of his business, as the case may be, in any previous year; or (*d*) carrying on the [34][*profession*] shall, if the profits and gains from the [34][*profession*] are deemed to be the profits and gains of such person under [35][*section 44ADA*] and he has claimed such income to be lower than the profits and gains so deemed to be the profits and gains of his [34][*profession*] and his income exceeds the maximum amount which is not chargeable to income-tax in any [36][*previous year; or*]

[37][(e) *carrying on the business shall, if the provisions of sub-section (4) of section 44AD are applicable in his case and his income exceeds the maximum amount which is not chargeable to income-tax in any previous year,*]

Get his accounts of such previous year audited by an accountant before the specified date and furnish by that date the report of such audit in the prescribed form duly signed and verified by such accountant and setting forth such particulars as may be prescribed

The procedure for completing the audit is provided in detail under Form 3CD under Rule 6G.

The audit report shall be under Form 3CA if the assessee has to get his accounts under any other law and Form 3CB if he is not required under any other law but only under section 44AB of the Income Tax Act. The particulars that need to be provided are contained in Form 3CD.

Audit report under Form 3CA or 3CB and the particulars under Form 3CD have to be signed by a Chartered Accountant

Refer for forms http://www.incometaxindia.gov.in/Pages/acts/income-tax-act.aspx

The time limit for completing the Tax audit and filing of the Income Tax return by an assessee liable to tax audit is normally 30th September of the assessment year relevant to the Financial Year in respect of which the return is filed. For the AY 2017/18, it is extended up to 30 October 2017 – vide order F.No 225/270/2017/ITA II

http://www.investsaver.com/wp-content/uploads/2015/09/cbdt-order-us-119-dt-31-aug-2017-itr-tax-audit-report-due-date-extended-upto-31-oct-2017.pdf

Finance Management - by Ravi karna what is debt securitisation.

Reproduced from ICAI notes on Types of Financing – Refer Q no 2 on Debt Securitization.
http://www.icaiknowledgegateway.org/littledms/folder1/chapter5-2.pdf

Reproduced from http://www.accountingnotes.net/financial-management/debt-securitization/debt-securitization-meaning-and-process-financial-management/10920

Accounts

1. **Price protection provided by ion ltd. - by RAJA SINGH**
   Whether Price Protection provided by Indian Oil Corporation Limited to its dealers be deducted while determining the cost of the purchase like trade discount, duty drawbacks & other similar items.

Accounting Standards (AS2) (revised 2016)

Costs of Purchase 7. The costs of purchase consist of the purchase price including duties and taxes (other than those subsequently recoverable by the enterprise from the taxing authorities), freight inwards and other expenditure directly attributable to the acquisition. Trade discounts, rebates, duty drawbacks and other similar items are deducted in determining the costs of purchase.

https://resource.cdn.icai.org/46912asb36718-as2.pdf

2. **Forex accounting - by Naveen Soni**
   1. Our home currency is INR and my company is maintaining USD account also and when we received dollar from our client directly in USD account then on which rate i should take to enter the transaction?
   2. When we are pay to supplier from after receiving the dollar from USD account then what rate should take to enter the transaction?

Indian Accounting Standard (Ind AS) 21 The Effects of Changes in Foreign Exchange Rates

13 A foreign currency transaction shall be recorded, on initial recognition in the functional currency, by applying to the foreign currency amount the spot exchange rate between the functional currency and the foreign currency at the date of the transaction.

14 The date of a transaction is the date on which the transaction first qualifies for recognition in accordance with Indian Accounting Standards. For practical reasons, a rate that approximates the actual rate at the date of the transaction is often used, for example, an average rate for a week or a month might be used for all transactions in each foreign currency occurring during that period. However, if exchange rates fluctuate significantly, the use of the average rate for a period is inappropriate.

Accounting Standard (AS) 11 (revised 2003) The Effects of Changes in Foreign Exchange Rates

9. A foreign currency transaction should be recorded, on initial recognition in the reporting currency, by applying to the foreign currency amount the exchange rate between the reporting currency and the foreign currency at the date of the transaction.

10. For practical reasons, a rate that approximates the actual rate at the date of the transaction is often used, for example, an average rate for a week or a month might be used for all transactions in each foreign currency occurring during that period. However, if exchange rates fluctuate significantly, the use of the average rate for a period is unreliable.

Recognition of Exchange Differences

13. Exchange differences arising on the settlement of monetary items or on reporting an enterprise's monetary items at rates different from those at which they were initially recorded during the period, or reported in previous financial statements, should be recognised as income or as expenses in the period in which they arise, with the exception of exchange differences dealt with in accordance with paragraph 15.
14. An exchange difference results when there is a change in the exchange rate between the transaction date and the date of settlement of any monetary items arising from a foreign currency transaction. When the transaction is settled within the same accounting period as that in which it occurred, all the exchange difference is recognised in that period. However, when the transaction is settled in a subsequent accounting period, the exchange difference recognised in each intervening period up to the period of settlement is determined by the change in exchange rates during that period.

Exchange rate difference between the date of initial recording of the transaction and the date of settlement is added to Purchases Cost to complete the Purchases transaction.

Corporate Law

1. **D<u>ifference clarification</u> - by HARINI-** Sir, Pls explain the difference between cooperative and member owned organizations

Under section 3(h) of THE MULTI-STATE CO-OPERATIVE SOCIETIES ACT, 2002 ACT NO. 39 OF 2002, "co-operative society" means a society registered or deemed to be registered under any law relating to co-operative societies for the time being in force in any State;

3 (n) "member" means a person joining in the application for the registration of a multi-State cooperative society and includes a person admitted to membership after such registration in accordance with the provisions of this Act, the rules and the byelaws;

25 (3) any person eligible for membership of a multi-State co-operative society may, on his application, be admitted as a member by such society.

A member owned organisation is a mutual benefit society which is defined under section 620A of the Companies Act, 1956 or section 406 of the Companies Act 2013 as follows:

406. (1) In this section, "Nidhi" means a company which has been incorporated as a Nidhi with the object of cultivating the habit of thrift and savings amongst its members, receiving deposits from, and lending to, its members only, for their mutual benefit, and which complies with such rules as are prescribed by the Central Government for regulation of such class of companies.

Thus a member owned organisation is a Nidhi u/s 406 of the Companies Act 2013 that receives deposits and lends to its members only.

2. **Notice for initiating action for having non-banking finance - by MUKESH JOSHI**
On today we have received a mail as mentioned below from the Delhi ROC:-
It has been observed that UMAID INVESTMENT CO PRIVATE LIMITED having CIN U65993DL1981PTC012505 has NBFC related activity code (65110, 65191, 65192, 65910, 65921, 65923, 65993, 65999 inter alia) and objects on the MCA21 Portal, however is confirmed to be not registered with the RBI as a NBFC.
You are to clarify the same and align the name, activity code, main objects of the Company by filing eForm MGT-14 and obtain regulatory sanctions as required within 10 days from the receipt of this letter failing which appropriate action shall be initiated without any further reference to you.
Kindly direct your response to the undersigned clearly citing the subject and letter no. both by post and by email rocdelhi.cr@mca.gov.in.

Now what is required to be done in this regard, Secondly, this company is doing no business at all.

The company has two alternatives before it to comply:

A. To apply to RBI for an NBC certification and submit the same to the Registrar of companies through e MGT 14 or
B. Proceed to alter the objects clause of the Memorandum of Association as provided under section 13(1) of the Companies Act,2013
    - File with the Registrar— (*a*) the special resolution passed by the company under sub-section (1) [13(6)] through e form MGT 14.

Since the company is not doing any NBFC business, it is advisable to follow the second option and alter the objects clause of the Memorandum of Association.

Steps involved are:

- Hold a Board meeting and pass a resolution to hold an Extraordinary General Meeting to alter the objects clause of the Memorandum (to delete the NBFC related objects)
- Issue notice of EGM along with explanatory statement containing the purpose and the draft of the special resolution proposed to be passed at the meeting
- Hold the EGM and pass the special resolution to amend the objects clause of the memorandum
- File in form MGT 14 with the Registrar a copy of the Special Resolution passed.

13 (9) The Registrar shall register any alteration of the memorandum with respect to the objects of the company and certify the registration within a period of thirty days from the date of filing of the special resolution in accordance with clause (*a*) of sub-section (6) of this section.

13 (10) No alteration made under this section shall have any effect until it has been registered in accordance with the provisions of this section.

FAQs for getting RBI Registration as an NBFC - From the RBI website: All you wanted to know about NBFCs -**(Updated as on January 10, 2017)**

FAQs:

3. NBFCs are doing functions similar to banks. What is difference between banks & NBFCs?

NBFCs lend and make investments and hence their activities are akin to that of banks; however there are a few differences as given below:

i. NBFC cannot accept demand deposits;
ii. NBFCs do not form part of the payment and settlement system and cannot issue cheques drawn on itself;
iii. Deposit insurance facility of Deposit Insurance and Credit Guarantee Corporation is not available to depositors of NBFCs, unlike in case of banks.

4. Is it necessary that every NBFC should be registered with RBI?

In terms of Section 45-IA of the RBI Act, 1934, no Non-banking Financial company can commence or carry on business of a non-banking financial institution without a) obtaining a certificate of registration from the Bank and without having a Net Owned Funds of ₹ 25 lakhs (₹ Two crore since April 1999). However, in terms of the powers given to the Bank, to obviate dual regulation, certain categories of NBFCs which are regulated by other regulators are exempted from the requirement of registration with RBI viz. Venture Capital Fund/Merchant Banking companies/Stock broking companies registered with SEBI, Insurance Company holding a valid Certificate of Registration issued by IRDA, Nidhi companies as notified under Section 620A of the Companies Act, 1956, Chit companies as defined in clause (b) of Section 2 of the Chit Funds Act, 1982,Housing Finance Companies regulated by National Housing Bank, Stock Exchange or a Mutual Benefit company.

5. What are the requirements for registration with RBI?

A company incorporated under the Companies Act, 1956 and desirous of commencing business of non-banking financial institution as defined under Section 45 I(a) of the RBI Act, 1934 should comply with the following:

i. it should be a company registered under Section 3 of the companies Act, 1956
ii. It should have a minimum net owned fund of ₹ 200 lakh. (The minimum net owned fund (NOF) required for specialized NBFCs like NBFC-MFIs, NBFC-Factors, CICs is indicated separately in the FAQs on specialized NBFCs)

6. What is the procedure for application to the Reserve Bank for Registration?

The applicant company is required to apply online and submit a physical copy of the application along with the necessary documents to the Regional Office of the Reserve Bank of India. The application can be submitted online by accessing RBI's secured website https://cosmos.rbi.org.in . At this stage, the applicant company will not need to log on to the COSMOS application and hence user ids are not required. The company can click on "CLICK" for Company Registration on the login page of the COSMOS Application. A window showing the Excel application form available for download would be displayed. The company can then download suitable application form (i.e. NBFC or SC/RC) from the above website, key in the data and upload the application form. The company may note to indicate the correct name of the Regional Office in the field "C-8" of the "Annex-I identification Particulars" in the Excel application form. The company would then get a Company Application Reference Number for the Certificate of Registration application filed on-line. Thereafter, the company has to submit the hard copy of the application form (indicating the online Company Application Reference Number, along with the supporting documents to the concerned Regional Office. The company can then check the status of the application from the above mentioned secure address, by keying in the acknowledgement number.

7. What are the essential documents required to be submitted along with the application form to the Regional Office of the Reserve Bank?

The application form and an indicative checklist of the documents required to be submitted along with the application is available at www.rbi.org.in → Site Map → NBFC List → Forms/ Returns.

3. **Checklist regarding merger of two private limited companies - by Asmita Purohit** (Company Secretary)
   Kindly provide me complete checklist of Documents and procedure of Merger of Two Private Limited Companies as per Companies Act, 2013.

   The provisions of section 233 of the Companies Act 2013 shall apply :
   a. Notice seeking objections from the Registrar/official Liquidator/any person affected by the scheme is sought within 30 days by the transferor and transferee company
   b. Objections received are considered at the respective general meetings of the private companies and approved by the shareholders with 9/10th majority
   c. Ach company files a declaration of solvency with the Registrar of the State applicable
   d. The scheme is considered and approved at a meeting of creditors/class of creditors convened by the company by giving 21 days' notice and approved at the meeting with 9/10 majority
   e. The transferee company shall file a copy of the scheme so approved with the Central Government, Registrar and official liquidator
   f. On receipt of the scheme, if there are no objections from the Registrar or Official liquidator, then the Central government will register the scheme and send the confirmation to the respective companies 233(3)
   g. The Registrar or the official liquidator can send their objections within 30days to the Central Government. if they do not communicate within 30 days, it shall be deemed that they do not have any objections

h. On receipt of the objections, the Central Government shall intimate the NCLT within 60 days that the scheme can be decided under the provisions of section 232. If it fails to communicate then it will be deemed that the Government does not have any objections.
i. The NCLT if it is convinced that the scheme is required to be considered under the provisions of section 232, it shall direct so or it may confirm the scheme and pass an order 233(6)
j. The order under 233(6) shall be communicated to the Registrar having jurisdiction over the transferee company who will register the confirmation and confirm to both the companies and the Registrar of companies having jurisdiction to the transferor company
k. This will have the effect of dissolution of the transferor company without liquidation

The effects of registration of the scheme of amalgamation under the provisions of section 233 (7) are:

(a)transfer of property or liabilities of the transferor company to the transferee company so that the property becomes the property of the transferee company and the liabilities become the liabilities of the transferee company;
(b) the charges, if any, on the property of the transferor company shall be applicable and enforceable as if the charges were on the property of the transferee company;
(c)legal proceedings by or against the transferor company pending before any court of law shall be continued by or against the transferee company; and
(d) where the scheme provides for purchase of shares held by the dissenting shareholders or settlement of debt due to dissenting creditors, such amount, to the extent it is unpaid, shall become the liability of the transferee company.

The transferee company cannot hold any shares in its name or in trust on its behalf or on behalf of its subsidiary companies after merger and such shares shall be cancelled

The transferee company shall file with the Registrar along with the approved scheme, the revised Authorised capital and pay the fees on the revised authorised capital

The secretarial steps are governed by section 25 of **Chapter XV -The Companies (Compromises, Arrangements and Amalgamations) Rules, 2016**

25 Merger or Amalgamation of certain companies:-

(1) The notice of the proposed scheme, under clause (a) of section 233 of the Act, to invite objections or suggestions from the Registrar and official liquidator or persons affected by the scheme shall be in **Form No.CAA.9.**

(2) For the purposes of clause (c) of sub section (1) of section 233 of the act the declaration of solvency shall be filed by each of the companies involved in the scheme of merger or amalgamation in **Form No.CAA.10** along with the fee as provided in the companies (Registration offices and fees) Rules, 2014, before convening the meeting of members and creditors for approval of the scheme.

(3) For the purpose of clause (b) and (d) of sub-section (1) of section 233 of the Act, the notice of the meeting to the members and creditors shall be accompanied by-

(a) a statement , as far as applicable, referred to in sub section (3) of section 230 of the act read with sub rule (3) of rule 6 hereof ;

(b) The declaration of solvency made in pursuance of clause (c) of sub-section (1) of section 233 of the Act in **Form No.CAA.10;**

(c) A copy of the scheme.

(4)(a) For the purposes of sub-section (2) of section 233 of the Act, the transferee company shall, within seven days after the conclusion of the meeting of members or class of members or creditors, file a copy of the scheme as agreed to by the members and creditors, along with a report of the result of each of the meetings in **Form no. CAA.11** with the central government, along with the fees as provided under the companies (Registration offices and fees) rules, 2014.

(b) Copy of the scheme shall also be filed, along with **Form No. CAA.11** with-

(i) The registrar of companies in **form no. GNL-1** along with fees provided under the companies (Registration offices and fees) rules, 2014; and

(ii) The official liquidator through hand delivery or by registered post or speed post.

(5) Where no objection or suggestion is received to the scheme from the Registrar of companies and official Liquidator or where the objection or suggestion of registrar and official liquidator is deemed to be not sustainable and the central government shall issue a confirmation order of such scheme of merger or amalgamation in **Form No. CAA.12.**

(6) Where objections or suggestions are received from the registrar of companies or official liquidator and the central government is of the opinion, whether on the basis of such objections or otherwise, that the scheme is not in the public interest of creditors, it may file an application before the tribunal in **Form No.CAA.13** within sixty days of the receipt of the scheme stating its objections or opinion and requesting that tribunal may consider the scheme under section 232 of the act.

(7) The confirmation order of the scheme issued by the central government or tribunal under sub section (7) of section 233 of the Act, shall be filed, within thirty days of the receipt of the order of confirmation, in **Form INC-28** along with the fees

as provided under companies (registration offices and fees) rules 2014 with the Registrar of companies respectively.

(8) For the purpose of this rule, it is clarified that with respect to schemes of arrangement or compromise falling within the purview of section 233 of the act, the concerned companies may, at their discretion, opt to undertake such schemes under sections 230to 232 of the Act, including where the condition prescribed in clause (d) of sub-section (1) of section 233 of the act has not been met.

4. **Urgent: managerial remuneration - by Dilshad Saifi**
Managing director of one of Indian listed company is resident of UK. In UK for payment of remuneration (including commission) to an employee, Employer is required to contribute 13.8% of remuneration to HMRC (revenue and custom dept., UK) towards national insurance contributions.
Company wants to pay commission to its M.D. in Pound from Company's Branch in UK. Query is whether contribution to HMRC will be treated as part of managerial remuneration of M.D. or not as in UK responsibility to pay this is of the Company.

According to Schedule V of the Companies Act 2013, the person to be appointed as a Managing Director or Manager shall be a resident in India (Part I Clause (e)). For this clause if he has been continuously residing in India for a period of 12 months immediately preceding the appointment as a Managerial person and has come to stay in India to take up employment in India or carrying on any business or profession in India, he shall be treated as Resident.

Part II of the Schedule talks about the remuneration payable. Under section 197 of the Companies Act 2013, it cannot exceed 11 % of the profits computed in accordance with section 198.

In computing the remuneration, as per Section IV of Part II to Schedule V, the following perquisites are not included.

Section IV.— Perquisites not included in managerial remuneration:
1. A managerial person shall be eligible for the following perquisites which shall not be included in the computation of the ceiling on remuneration specified in Section II and Section III:—

(a) contribution to provident fund, superannuation fund or annuity fund to the extent these either singly or put together are not taxable under the Income-tax Act, 1961 (43 of 1961);
(b) gratuity payable at a rate not exceeding half a month's salary for each completed year of service; and
(c) Encashment of leave at the end of the tenure.

2. In addition to the perquisites specified in paragraph 1 of this section, an expatriate managerial person (including a non-resident Indian) shall be eligible to the following perquisites which shall not be included in the computation of the ceiling on remuneration specified in Section II or Section III—

(a) Children's education allowance: In case of children studying in or outside India, an allowance limited to a maximum of Rs. 12,000 per month per child or actual expenses incurred, whichever is less. Such allowance is admissible up to a maximum of two children.
(b) Holiday passage for children studying outside India or family staying abroad: Return holiday passage once in a year by economy class or once in two years by first class to children and to the members of the family from the place of their study or stay abroad to India if they are not residing in India, with the managerial person.
(c) Leave travel concession: Return passage for self and family in accordance with the rules specified by the company where it is proposed that the leave be spent in home country instead of anywhere in India.

Payment of Employer required contribution of 13.8% of remuneration to HMRC (revenue and custom dept., UK) towards national insurance contributions do not fall within the definition of perquisites that are excluded from the remuneration under Section IV of Part II to Schedule V to the Act.

Hence the UK based insurance contributions should come within the limits of remuneration fixed under section 197.
If by virtue of including the British Insurance Premium, the remuneration exceeds 11% of the net profits computed under section 198, then the shareholders at its General meeting after approval by the Central Government, shall authorise the payment of excess remuneration.

Thus the requirements to be considered are:

- To ensure the MD is a resident in India (his stay must be atleast continuous for a period of 12 months)
- His remuneration cannot exceed 11% of net profits computed under section 198(before deducting the remuneration)
- The perquisites that will not form part of remuneration must be those that are exempt from Income Tax under section 10(12) 10(25)
- British Insurance is not a perquisite and hence will be part of the remuneration and should be within the 11% limit
- Any excess payment must be approved by the Central Government and then authorised by a special resolution at the company's General meeting

5. **Voting by show of hands in board meeting - by Kapil Bisht**
   Sir,
   Sec 107 provides that voting by show of hands in the general meeting is conclusive evidence. Whether the same shall be applicable to the meeting of the Board of Directors.

Board resolutions can be passed either at the meeting of the Board or by means of resolution by Circulation. Section 175

Passing of Resolution by Circulation — **Notified Date of Section: 01/04/2014**

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

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

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

The section does not indicate the procedure for voting of the resolution.

Secretarial standards 1 on Board Meetings – Para 6 talks about voting on resolutions by Board members.

6. Passing of Resolution by Circulation: The Act requires certain business to be approved only at Meetings of the Board. However, other business that requires urgent decisions can be approved by means of Resolutions passed by circulation. Resolutions passed by circulation are deemed to be passed at a duly convened Meeting of the Board and have equal authority.

   6.3.2 The Resolution, if passed, shall be deemed to have been passed on the last date specified for signifying assent or dissent by the Directors or the date on which assent from more than two-third of the Directors has been received, whichever is earlier, and shall be effective from that date, if no other effective date is specified in such Resolution.

   Directors shall signify their assent or dissent by signing the Resolution to be passed by circulation or by e-mail or any other electronic means.

Directors shall append the date on which they have signed the Resolution. In case a Director does not append a date, the date of receipt by the company of the signed Resolution shall be taken as the date of signing.

6.5. Validity Passing of Resolution by circulation shall be considered valid as if it had been passed at a duly convened Meeting of the Board.

This shall not dispense with the requirement for the Board to meet at the specified frequency.

The resolutions by circulation has to be done by recording the assent or dissent by putting the signature with date.

Thus any resolution passed at the regular meeting can be by show of hands and the Minutes will contain the particulars of proceedings of meetings. The contents of the minutes shall include:

7. Minutes: Every company shall keep Minutes of all Board and Committee Meetings in a Minutes Book. Minutes kept in accordance with the provisions of the Act evidence the proceedings recorded therein. Minutes help in understanding the deliberations and decisions taken at the Meeting.

7.2.2.1 Minutes shall inter-alia contain:
(m) The fact of the dissent and the name of the Director who dissented from the Resolution or abstained from voting thereon.
(n) Ratification by Independent Director or majority of Directors, as the case may be, in case of Meetings held at a shorter Notice and the transacting of any item other than those included in the Agenda.
(o) The time of commencement and conclusion of the Meeting.

7.2.2.2. Apart from the Resolution or the decision, Minutes shall mention the brief background of all proposals and summarise the deliberations thereof. In case of major decisions, the rationale thereof shall also be mentioned.

The decisions shall be recorded in the form of Resolutions, where it is statutorily or otherwise required. In other cases, the decisions can be recorded in a narrative form.

Where a Resolution was passed pursuant to the Chairman of the Meeting exercising his second or casting vote, the Minutes shall record such fact.

Thus the voting at the Board meeting is by show of hands only and the fact of dissent will be recorded in the Minutes.

Resolution by circulation shall be by signing the same and by recording the assent or dissent by the Director.

Professional Resource

1. **Query regarding project report for cash credit loan - by Pravin Kumar Shirahatti**
   how to calculate interest and outstanding cash credit for projected BS and PL

http://www.southindianbank.com/UserFiles/Forms/LD%202126.pdf

CREDIT FACILITY AGREEMENT between the borrower and THE SOUTH INDIAN BANK LTD:

2.6 REPAYMENT AND INTEREST

e) Interest specified in the Sanction Letter or any other provision in the Transaction Documents will be computed from the respective date of drawal and shall become payable upon the footing of compound interest with monthly rests or such other rests as may be prescribed by the Bank from time to time.

f) Interest on the outstanding amounts under the Facilities / discount or other charges when debited to the relevant Account by the Bank, shall be calculated on the daily debit balance of such Account. In the event of remittance being made into the account after the normal business hours (i.e. beyond 4 hours from the commencement of business hours), but within the extended business hours, the Bank will have the discretion to value date such remittance on the next succeeding business day for the purpose of calculation of interest.

g) Interest, commission, discount and all other charges shall accrue from day to day and shall be computed on the basis of 365 days a year for rupee Facilities and 360 days for foreign currency Facilities, and the actual number of days elapsed.

h) The Borrower(s) further agrees(s) that Bank is at liberty to vary the MCLR at periodic intervals depending on tenor/ residual tenor to next reset date and / or the Spread at such rate(s) as may be decided by the Bank from time to time either on account of a revision in the MCLR of the Bank for the corresponding tenor/ residual tenor and/ or deterioration in credit quality/ rating of the Borrower(s) as assessed from time to time by the Bank or otherwise as decided by the Bank from time to time/ as per directives of the Reserve Bank of India as the Borrower(s) agree(s) to pay the interest at such revised rate. The Borrower specifically waives notice of variation of any change in the interest rate/ rest and notice published in Bank's Notice Board/Web Site of the Bank or entry regarding debit of interest in the statement of account shall be deemed to be sufficient notice of variation in rate of interest/ rest to the Borrower. Further, the Bank will be entitled to effect changes in the „Spread" from time to time with due intimation to the Borrower and unless and until notified by the Bank, the prevailing Spread will continue to apply and will be added to the applicable/ revised MCLR to determine the effective rate of interest. Provided, further that the interest payable by the Borrower shall also be subject to the changes in the interest rates made by Reserve Bank of India from time to time.

i) The principal amount under the respective Facilities shall always include and/or shall deem to and include also the interest calculated and debited to the loan account with rests mentioned hereinabove as well as all other charges, costs etc. debited in the account of the Borrower from time to time cumulatively.

j) The Borrower agrees to service the interest as and when debited in the account

Others

1. **Partnership firm registration - by Gautam**
   I want to register partnership firm. I have a partnership deed, and have the following doubt to register: 1. Can I do it without any CA/ Lawyer? 2. What s specimen of affidavit and is that mandatory? 3. Where will I get the details about the addresses of registrar of firms?

It is your confidence to get the registration of Partnership firm done without an CA or a lawyer

The Partnership Act, 1932 (Act No IX of 1932)

Section58 APPLICATION FOR REGISTRATION.

(1) Subject to the provisions of sub-section of sub-section (1A), the registration of a firm effected by sending by post or delivering to the Registrar of the area in which any place of business of the firm is situated or proposed to be situated, a statement in the prescribed form and accompanied by the prescribed fee and a true copy of the deed of partnership stating:

(a) The firm-name,
(aa) the nature of business of the firm;
(b) The place or principal place of business of the firm,
(c) The names of any other places where the firm carries on business,
(d) The date when each partner joined the firm,
(e) The names in full and permanent addresses of the partners, and
(f) The duration of the firm. The statement shall be signed by all the partners, or by their agents specially authorised in this behalf.

(1A) the statement under sub-section (1) shall be sent or delivered to the Registrar within a period of one year from the date of constitution of the firm:

Provided that in the case of any firm carrying on business on or before the date of commencement of the Indian Partnership (Maharashtra Amendment) Act, 1984, such statement shall be sent or delivered to the Registrar within a period of one year firm such date.

(2) Each person signing the statement shall also verify it in the manner prescribed.

Section71 POWER TO MAKE RULES.

(1) Subject to the provisions of section 70A, the State Government may, by notification in the Official Gazette, make rules prescribing the fees which shall accompany documents sent to the Registrar or which shall be paid in respect of any intimation, notice or application given to the Registrar or which shall be payable for the inspection of documents in the custody of the Registrar or for copies from the Register of Firms or which shall be paid for supply of any prescribed forms.

(2) The State Government may also make rules (a) prescribing the form of statement submitted under sub-section (1) of section 58 and of the verification thereof;

You may have to check the rules framed in this regard by the State Government.

2. **Generic query - by Tarun -**I had few queries regarding change in constitution of Firm.
    1. If One proprietorship firm is in existence from last 5 years now we want to convert it in to partnership firm hence also want to change its name, does change in name of CA firm and Constitution have any effect on the number of years the firm has been in existence. Will seniority of the firm be affected for all purposes like empanelment etc.?
    2. Does change in name requires for change in Firm Reg No?

The Indian Partnership Act, 1932, for registration under section 58 (1A) the statement under sub-section (1) shall be sent or delivered to the Registrar within a period of one year from the date of constitution of the firm.

The date when the proprietary firm is converted into partnership shall be the start date and within one year the registration can be applied for.

With regard to Firm Registration with the Institute for empanelment purposes, I would request you direct the query to member section of the ICAI.
Contact e mail at Chennai SIRC of ICAI kalai@icai.in

3. **Process to close HUF bank account - by Milind**

My father was the Karta of HUF. There are 2 bank accounts in the name of this HUF. My father is expired so the new Karta will be my mom or elder brother.

4. My Query
Can we close one of the HUF bank account (since it’s a very old account and is in old location-outstation and it will be difficult to operate it) and transfer the balance into the other one. ?

You produce the legal heir certificate and the death certificates of your father and send to bank for closure of one account and transferring the balance to another. Also you can change the second account in the name of your mother with No Objection Certificate from you/your brothers and sisters.