Draft Rules under Companies Act, 2013

Ministry of Corporate Affairs

NOTIFICATION

New Delhi, the _____ 2013

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

PRELIMINARY

Short title and commencement.

1.1. (1) These rules may be called the Companies Rules, 2013.

(2) These rules shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint and different dates may be appointed for different rules and any reference in any rule to the commencement of these rules shall be construed as a reference to the coming into force of that rule.

(3) The provisions of rules made under Chapter XXVII of the Act shall also be applicable on matters where approval of Tribunal is required to be obtained under any other rules made under this Act.

Definitions.

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

(a) "Act" means the Companies Act, 2013 (… of 2013);

(b) "Annexure" means Annexure to these rules;

(c) "Certifying Authority" for the purpose of 'Digital Signature Certificate' means a person who has been granted a licence to issue a Digital Signature Certificate under section 24 of the Information Technology Act, 2000 (21 of 2000) as amended from time to time;

(d) "Director Identification Number" (DIN) means an identification number allotted by the Central Government to any individual, in accordance with section 154 of the Act, intending to be appointed as director or to any existing director of a company, for the purpose of his identification as such;

Provided that the Director Identification Number(DIN) obtained by individuals prior to the notification of these rules shall be the DIN for The purpose of the Companies Act, 2013.

(e) "Digital Signature" means digital signature as defined under clause (p) of sub-section (1) of section 2 of the Information Technology Act, 2000;

(f) "Digital Signature Certificate" means a Digital Signature Certificate as defined under clause (q) of sub-section (1) of section 2 of the Information Technology Act, 2000;

(g) "e-Form" means a form in the electronic form as prescribed under the Act or rules made there under and notified by the Central Government under the Act;

(h) "Electronic Record" means electronic record as defined under clause (t) of sub-section (1) of section 2 of the Information Technology Act, 2000;

(i) "Electronic Registry" means an electronic repository or storage system of the Central Government in which the information or documents are received, stored, protected and preserved in electronic form;

(j) "Electronic Mail (e-mail)" means message sent, received or forwarded in digital form using any electronic communication mechanism such that the message so sent, received or forwarded is storable and retrievable ;

(k) For the purposes of clause (42) of section 2 of the Act, the phrase 'electronic mode' means carrying out, business electronically including, but not limited to:-

(i) business to business and business to consumer transactions, data interchange and other digital supply transactions;

(ii) offering to accept deposits or subscriptions in India or from citizens of India;

(iii) financial settlements, web based marketing, advisory and transactional services database services and products, supply chain management;

(iv) online services such as telemarketing, telecommuting, telemedicine, education and information research; and

(v) all related data communication services,

whether conducted by e-mail, mobile devices, social media, cloud computing, document management, voice or data transmission or otherwise.

(l) Executive Director means a whole time director as defined in section 2(94) of the Act.

(m) 'Form' means a form set forth in Annexure 'A' which shall be used for the matter to which it relates;

(n) "OPC" means a One Person Company as defined in section 2(62) of the Act;

(o) "Pre-fill" means the automated process of data input by the computer system from the database maintained in electronic registry of the Central Government;

(p) "Registrar's Front Office" means an office maintained by the Central Government or an agency authorized by it to facilitate e-filing of documents into the electronic registry and their inspection and viewing;

(q) "Regional Director" means the person appointed by the Central Government in the Ministry of Corporate Affairs as a Regional Director;

(r) "section" means section of the Act;

(s) "Total Share Capital", for the purposes of sub- sections (6) and (87) of section 2, means aggregate of the:-

(a) paid-up equity share capital-

and

(b) paid - up preference share capital;

(t) For the purposes of Section 164(1)(d) and Section 167(1)(f) of the Act, "or otherwise" means any other offence in respect of which he has been convicted by a Court under this Act.

(2) Words and expressions used in these rules but not defined shall have the meaning respectively assigned to them in the Act or the Securities Contracts (Regulation) Act, 1956 (42 of 1956) or the Securities and Exchange Board of India Act, 1992 (15 of 1992) or the Depositories Act, 1996 (22 of 1996) or the Information Technology Act, 2000 (21 of 2000) or rules and regulations made thereunder.

(3) Save as otherwise specifically provided, the words and expressions used but not defined under these rules but defined under National Company Law Tribunal Rules 2013, shall have the meanings respectively assigned to them in such Rules.

(4) Save as otherwise specifically provided any requirement or procedure or applicable before NCLT under these Rules vis-a-vis under relevant provision of the Act and not provided under these rules, but provided under National Company Law Tribunal Rules 2013 Shall have the effect as if these are also provided for under these Rules.

(5) Notwithstanding amendment of these rules from time to time, these rules shall be reviewed once in three years.

Related party

1.3. For the purposes of clause (ix) of sub-section (76) of section 2, the following persons, with reference to a company, shall be deemed to be a related party-

(1) a director or key managerial personnel of the holding, subsidiary or associate company of such company or his relative;

(2) any person appointed in senior management in the company or its holding, subsidiary or associate company i.e. personnel of the company or its holding, subsidiary or associate company who are members of core management team excluding Board of directors comprising all members of management one level below the executive directors, including the functional heads.

List of relatives

1.4. For the purposes of sub-clause (iii) of sub-section (77) of section 2, a person shall be deemed to be the relative of another, if he or she is related to another in the following manner:

(1) Spouse

(2) Father (including step-father)

(3) Father's father

(4) Father's mother

(5) Mother (including step-mother)

(6) Mother's mother

(7) Mother's father

(8) Son (including step-son)

(9) Son's wife

(10) Son's son

(11) Son's daughter

(12) Daughter (including step-daughter)

(13) Daughter's husband

(14) Brother (including step-brother)

(15) Sister (including step-sister)

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CHAPTER II

INCORPORATION OF COMPANY AND MATTERS INCIDENTAL THERETO

Person incorporating a One Person Company to be a natural person, Indian citizen and resident in India

2.1 (1) In exercise of the powers conferred by sub-section (1) of section 469, for the purposes of sections 3 and 4, only a natural person who is an Indian citizen and resident in India:-

(a) shall be eligible to incorporate a One Person Company;

(b) shall be a nominee for the sole member of a One Person Company.

Explanation: For the purposes of this rule, the term "resident in India" means a person who has stayed in India for a period of not less than one hundred and eighty two days during the immediately preceding one financial year.

(2) No person shall be eligible to incorporate more than five One Person Companies.

(3) Where a natural person, being member in One Person Company in accordance with this rule becomes a member in another One Person Company by virtue of his being a nominee in that One Person Company, he/she shall meet the eligibility criteria specified in rule 2.1(2) within a period of one hundred and eighty days.

Nomination by the subscriber or member of One Person Company.

2.2 For the purposes of first proviso to sub-section (1) of section 3,

(1) The subscriber to the memorandum of a One Person Company shall nominate a person, after obtaining his/her prior written consent, who shall, in the event of the subscriber's death or his incapacity to contract, become the member of that One Person Company.

(2) Name of the person nominated under sub-rule (1) shall be mentioned in the memorandum of One Person Company and the nomination in Form No. 2.1 along with consent of such nominee obtained in Form No. 2.2 and fee as provided in Annexure 'B shall be filed with the Registrar at the time of incorporation of the company along with its memorandum and articles.

(3) In pursuance of second proviso of sub-section (1) of section 3, the person nominated by the subscriber or member of One Person Company may, withdraw his consent by giving a notice in writing to such sole member and to the One Person Company.

Provided that the sole member shall nominate another person as nominee within 15 days on the receipt of the notice of withdrawal and shall send an intimation of such nomination in writing to the Company, along with the written consent of such other person so nominated in Form No. 2.2.

(4) The company shall within thirty days of receipt of the notice of withdrawal of consent under sub-rule (3) file with the Registrar, a notice of such withdrawal of consent and the intimation of the name of another person nominated by the sole member in Form No.2.3 along with fee as provided in Annexure 'B' and the written consent of such another person so nominated in Form No.2.2.

(5) For the purposes of third proviso of sub-section (1) of section 3, the subscriber or member of a One Person Company may, by intimating in writing to the company, change the name of the person nominated by him at any time for any reason including in case of death or incapacity to contract of nominee and nominate another person after obtaining the prior consent of such another person in Form No. 2.2.

Provided that the company shall, on the receipt of such intimation, file with the Registrar, a notice of such change in Form No. 2.4 along with fee as provided in Annexure 'B', and with the written consent of the new nominee in Form No. 2.2 within 30 days of receipt of intimation of the change.

(6) Where the sole member of One Person Company ceases to be the member in the event of his death or his incapacity to contract and his nominee becomes the member of such One Person Company, such new member shall nominate within fifteen days of becoming the member a person who shall in the event of his death or his incapacity to contract become

the member of such company, and the company shall file with the Registrar an intimation of such cessation and nomination in Form No. 2.5 along with the fee as provided in Annexure 'B' within 30 days of the change in membership and with the prior written consent of the person so nominated in Form No. 2.2.

2.3 Penalty

If One Person Company or any officer of the OPC contravenes the provisions of these rules, OPC or any officer of the OPC shall be punishable with fine which may extend to five thousand rupees and with a further fine which may extend to five hundred rupees for every day after the first during which such contravention continues.

One Person Company to convert itself into a public company or a private company in certain cases

2.4 In exercise of the powers conferred by sub-section (1) of section 469,

(1) Where the paid up share capital of a One Person Company exceeds fifty lakh rupees or its average annual turnover during the relevant period exceeds two crore rupees, it shall cease to be entitled to continue as a One Person Company.

(2) Such One Person Company shall be required to convert itself, within six months of the date on which its paid up share capital is increased beyond fifty lakh rupees or the last day of the relevant period during which its average annual turnover exceeds two crore rupees or the close of the financial year during which its balance sheet total exceeds one crore rupees, as the case may be, into either a private company with minimum of two members and two directors or a public company with minimum of seven members and three directors in accordance with the provisions of section 18 of the Act.

(3) It shall alter its memorandum and articles by passing an ordinary or special resolution in accordance with sub-section

(3) of section 122 of the Act to give effect to the conversion and to make necessary changes incidental thereto.

(4) Within thirty days of the sub-rule (1) becoming applicable, the One Person Company shall give a notice to the Registrar in Form No. 2.6 informing that it has ceased to be a One Person Company and that it is now required to convert itself into a private company or a public company by virtue of its paid up share capital or average annual turnover, having exceeded the threshold limit laid down in sub-rule (1) above.

Explanation.-For the purposes of this rule,-

(a) "relevant period" means the period of immediately preceding three consecutive financial years; and

(5) If One Person Company or any officer of the OPC contravenes the provisions of these rules, OPC or any officer of the OPC shall be punishable with fine which may extend to five thousand rupees and with a further fine which may extend to five hundred rupees for every day after the first during which such contravention continues.

(6) One Person company can get itself converted into a Private or Public company after increasing the minimum number of members and directors to two or minimum of seven members and three directors as the case may be, and by maintaining the minimum paid-up capital as per requirements of the Act for such class of company and by making due compliance of section 18 of the Act for conversion.

Undesirable names.

2.5. (1) For the purposes of clause (a) of sub-section (2) of section 4, in determining whether a proposed name is identical with another, the differences on account of the following shall be disregarded:

(a) the words Private, Pvt, Pvt., (P), Limited, Ltd, Ltd., LLP, Limited Liability Partnership;

(b) the words appearing at the end of the names – company, and company, co., co, corporation, corp, corpn, corp.;

(c) the plural version of any of the words appearing in the name;

(d) the type and case of letters, spacing between letters and punctuation marks;

(e) joining words together or separating the words does not make a name distinguishable from a name that uses the similar, separated or joined words;

(f) the use of a different tense or number of the same word does not distinguish one name from another;

(g) Using different phonetic spellings or spelling variations does not distinguish one name from another. For example, P.Q. Industries limited is existing then P and Q Industries or Pee Que Industries or P n Q Industries or P & Q Industries will not be allowed. Similarly if a name contains numeric character like 3, resemblance shall be checked with 'Three' also;

(h) misspelled words, whether intentionally misspelled or not, do not conflict with the similar, properly spelled words;

(i) the addition of an internet related designation, such as .com, .net, .edu, .gov, .org, .in does not make a name distinguishable from another, even where (.) is written as 'dot';

(j) the addition of words like New, Modern, Nav, Shri, Sri, Shree, Sree, Om, Jai, Sai, The, etc. does not make a name distinguishable from an existing name. Similarly, if it is different from the name of the existing company only to the extent of adding the name of the place, the same shall not be allowed; Such names may be allowed only if no objection from the existing company by way of Board resolution is submitted;

(k) different combination of the same words does not make a name distinguishable from an existing name, e.g., if there is a company in existence by the name of "Builders and Contractors Limited", the name "Contractors and Builders Limited" will not be allowed unless it is change of name of existing company;

(l) if the proposed name is the Hindi or English translation or transliteration of the name of an existing company or limited liability partnership in English or Hindi, as the case may be.

(2) For the purposes of sub-clause (ii) of clause (b) of sub-section (2) of section 4:

(a) a name shall be considered undesirable if:-

(i) it attracts the provisions of section 3 of the Emblems and Names (Prevention and Improper Use) Act, 1950 (12 of 1950);

(ii) it includes the name of a registered trade mark or a trade mark which is subject of an

application for registration, unless the consent of the owner or applicant for registration, of the trade mark, as the case may be, has been obtained and produced by the promoters;

(iii) it includes any word or words which are offensive to any section of the people;

(b) a name shall also generally be considered undesirable if:-

(i) the proposed name is identical with or too nearly resembles the name of a limited liability partnership;

(ii) it is not in consonance with the principal objects of the company as set out in the memorandum of association:

Provided that every name need not be necessarily indicative of the objects of the company, but when there is some indication of objects in the name, then it shall be in conformity with the objects mentioned in the memorandum;

(iii) the Company's main business is financing, leasing, chit fund, investments, securities or combination thereof, such name shall not be allowed unless the name is indicative of such related financial activities, viz., Chit Fund/ Investment/ Loan, etc.;

(iv) it resembles closely the popular or abbreviated description of an existing company or limited liability partnership;

(v) the proposed name is identical with or too nearly resembles the name of a company or limited liability partnership incorporated outside India and reserved by such company or limited liability partnership with the Registrar:

Provided that if a foreign company is incorporating its subsidiary company in India, then the original name of the holding company as it is may be allowed with the addition of word India or name of any Indian state or city, if otherwise available;

(vi) any part of the proposed name includes the words indicative of a separate type of business constitution or legal person or any connotation thereof e.g. co-operative, sehkari, trust, LLP, partnership, society, proprietor, HUF, firm, Inc., PLC, GmbH, SA, PTE, Sdn, AG etc.;

Explanation: Name including phrase **'Electoral Trust'** may be allowed for Registration of companies to be formed under section 25 of the Companies Act, 1956 under the Electoral Trusts Scheme 2013 as notified by the Central Board of Direct Taxes (CBDT); provided that name application is accompanied with an affidavit to the effect that the name to be obtained shall be only for the purpose of registration of companies

under Electoral Trust Scheme as notified by the CBDT.

(vii) the proposed name contains the words 'British India';

(viii) the proposed name implies association or connection with embassy or consulate or a foreign government;

(ix) the proposed name includes or implies association or connection with or patronage of a national hero or any person held in high esteem or important personages who occupied or are occupying important positions in Government;

(x) the proposed name is vague or an abbreviated name such as 'ABC limited' or '23K limited' or 'DJMO' Ltd: abbreviated name based on the name of the promoters will not be allowed. For example:- BMCD Limited representing first alphabet of the name of the promoter like Bharat, Mahesh, Chandan and David.

Provided that existing company may use its abbreviated name as part of the name for formation of a new company as subsidiary or joint venture or associate company but such joint venture or associated company shall not have an abbreviated name only e.g. Delhi Paper Mills Limited can get a joint venture or

associated company as DPM Papers Limited and not as DPM Limited

However the companies well known in their respective field by abbreviated names are allowed to change their names to abbreviation of their existing name after following the requirements of the Act;

(xi) the proposed name is identical to the name of a company dissolved as a result of liquidation proceeding and a period of two years have not elapsed from the date of such dissolution (since the dissolution of the company could be declared void within the period aforesaid by an order of the Tribunal under section 356 of the Act). Further, if the proposed name is identical with the name of a company which is struck off in pursuance of action under section 248 of the Act, then the same shall not be allowed before the expiry of twenty years from the publication in the Official Gazette being so struck off (since the company can be restored anytime within such period by the Tribunal);

(xii) it is identical with or too nearly resembles the name of a limited liability partnership in liquidation or the name of a limited liability partnership which is struck off up to a period of five years;

(xiii) the proposed name include words such as 'Insurance', 'Bank', 'Stock Exchange', 'Venture Capital', 'Asset Management', 'Nidhi', 'Mutual fund' etc., unless a declaration is submitted by the applicant that the requirements mandated by the respective regulator, such as IRDA, RBI, SEBI, MCA etc. have been complied with by the applicant;

(xiv) the proposed name includes the word "State", the same shall be allowed only in case the company is a government company.

(xv) the proposed name is containing only the name of a continent, country, state, city such as Asia limited, Germany Limited, Haryana Limited, Mysore Limited;

(xvi) the name is only a general one, like Cotton Textile Mills Ltd. or Silk Manufacturing Ltd., and not Lakshmi Silk Manufacturing Co. Ltd;

(xvii) it is intended or likely to produce a misleading impression regarding the scope or scale of its activities which would be beyond the resources at its disposal:

(xviii) the proposed name includes name of any foreign country or any city in a foreign country, the same shall be allowed if the applicant produces any proof of significance of business relations with such foreign country like MOU with a company of such country .Provided further the name

combining the name of a foreign country with the use of India like India Japan or Japan India shall be allowed if, there is a government to government participation or patronage. No company shall be incorporated using the name of an enemy country. (Enemy country means so declared by the Central Government from time to time).

(3) If any company has changed its activities which are not reflected in its name, it shall change its name in line with its activities within a period of six months from the change of activities after complying with all the provisions as applicable to change of name.

(4) In case the key word used in the name proposed is the name of a person other than the name(s) of the promoters or their close blood relatives, No objection from such other (s) shall be attached with the application for name. In case the name includes the name of relatives, the proof of relation shall be attached. It shall be mandatory to furnish the significance and proof thereof for use of coined words made out of the name of the promoters or their relatives.

(5) The applicant shall declare in affirmative or negative (to affirm or deny) whether they are using or have been using in the last 5 years , the name applied for incorporation of company or LLP in any other business constitution like Sole proprietor or Partnership or any other incorporated or unincorporated entity and if, yes details thereof and NOC from other partners and associates for use of such name by the proposed Company or LLP as the case may be and also a declaration as to whether such other business shall be taken over by the proposed company or LLP or not .

(6) For the purposes of clause (b) of sub-section (3) of section 4, the following words and combinations thereof shall not be used in the name of a company in English or any of the languages depicting the same meaning unless the previous

approval of the Central Government has been obtained for the use of any such word or expression:

(a) Board;
(b) Commission;
(c) Authority; or
(d) Undertaking
(e) National
(f) Union
(g) Central
(h) Federal
(i) Republic
(j) President
(k) Rashtrapati,
(l) Small Scale Industries
(m) Khadi and Village Industries Corporation
(n) Financial, forest, Corporation and the like
(o) Municipal
(p) Panchayat
(q) Development Authority;
(r) Prime Minister or Chief Minister
(s) Minister
(t) Nation
(u) Forest corporation
(v) Development Scheme
(w) Statute or Statutory
(x) Court or Judiciary
(y) Governor
(z) Development Scheme or the use of word Scheme with the name of Government (s) , State , India,

Bharat or any government authority or in any manner resembling with the schemes launched by Central, state or local Governments and authorities.

(7) For Section 8 Companies, the name shall include the words foundation, Forum, Association, Council and the like.

(8) The names freed on change of name by any company shall remain in data base and shall not be allowed to be taken by any other company including the group company of the company who has changed the name for a period of three years from the date of change subject to specific direction from the Tribunal in the course of merger or reconstruction or demerger.

Reservation of name.

2.6. For the purposes of sub-section (4) of section 4, an application for the reservation of a name shall be made in Form No. 2.7 along with the fee as provided in Annexure 'B'.

2.7. For the purposes of sub-section (5) of section 5, where the articles contain the provisions for entrenchment, the company shall give notice to the Registrar of such provisions in Form No. 2.8 along with the fee as provided in Annexure 'B' within thirty days from the date of formation of the company or amendment of the articles, as the case may be.

2.8. For the purposes of sub-section (6) of section 5, the model articles as prescribed in Table F, G, H, I and J of Schedule I may be adopted by a company as may be applicable to the case of the company, either in totality or otherwise.

Application for incorporation of companies.

2.9. For the purposes of sub-section (1) of section 7, an application shall be filed, with the Registrar within whose jurisdiction the registered office of the company is proposed to be situated, in Form No. 2.9 along with the fee as provided in Annexure 'B' for registration of a company:

Signing of memorandum and articles.

2.10. For the purpose of clause (a) of sub-section (1) of section 7, the Memorandum and Articles of Association of the company shall be signed in the following manner:-

(1) Memorandum and articles of association of the company shall be signed by each subscriber to the memorandum, who shall add his name, address, description and occupation, if any, in the presence of at least one witness who shall attest the signature and shall likewise sign and add his name, address, description and occupation, if any. The witness shall state that "I witness to subscriber/subscriber(s). who has/have subscribed and signed in my presence (date and place to be given). Further I have verified his/their ID for their identification and satisfied myself of his/her/their identification particulars as filled in.

(2) Where a subscriber to the memorandum is illiterate, he shall affix his thumb impression or mark which shall be described as such by the person, writing for him, who shall place the name of the subscriber against or below the mark and authenticate it by his own signature. He shall also write against the name of the subscriber, the number of shares taken by him. Such person shall also read and explain the contents of the memorandum and articles of association to the subscriber and make an endorsement to that effect on the memorandum and articles of association.

(3) Where the subscriber to the memorandum is a body corporate, the memorandum and articles of association shall be signed by director, officer or employee of the body corporate duly authorized in this behalf by a resolution of the board of directors of the body corporate and where the subscriber is a Limited Liability Partnership, it shall be signed by a partner of the Limited Liability Partnership, duly authorized by a resolution approved by all the partners of the Limited Liability Partnership, provided that in either case, the person so authorized shall not, at the same time, be a subscriber to the memorandum and articles of Association.

(4) Where subscriber to the memorandum is a foreign national residing outside India,

(a) in a country in any part of the Commonwealth, his signatures and address on the memorandum and articles of association and proof of identity shall be notarized by a Notary (Public) in that part of the Commonwealth.

(b) in a country which is a party to the Hague Apostille Convention, 1961, his signatures and address on the memorandum and articles of association and proof of identity shall be notarized before the Notary (Public) of the country of his origin and be duly apostillised in accordance with the said Hague Convention.

(c) in a country outside the Commonwealth and which is not a party to the Hague Apostille Convention, 1961, his signatures and address on the memorandum and articles of association and proof of identity, shall be notarized before the Notary (Public) of such country and the certificate of the Notary (Public) shall be authenticated by a Diplomatic or Consular Officer empowered in this behalf under section 3 of the Diplomatic and Consular Officers (Oaths and Fees) Act, 1948 (40 of 1948) or, where there is no such officer by any of the officials mentioned in section 6 of the Commissioners of Oaths Act, 1889 (52 and 53 Vic.C.10), or in any Act amending the same.

(d) If, a foreign national visited in India and intended to incorporate a company, in such case the incorporation shall be allowed if, he/she is having a valid Business Visa.

Explanation :-In case of Person is of Indian Origin or Overseas Citizen of India, requirement of business Visa will not be applicable.

Declaration by professionals.

2.11. For the purposes of clause (b) of sub-section (1) of section 7, the declaration by an advocate, a Chartered Accountant, Cost accountant or Company Secretary in practice shall be in Form No. 2.10.

Affidavit from subscribers and first directors.

2.12. For the purposes of clause (c) of sub-section (1) of section 7, the affidavit shall be submitted by each of the subscribers to the memorandum and each of the first directors named in the articles in Form 2.11.

Particulars of every subscriber to be filed with the Registrar at the time of incorporation.

2.13. (1) For the purposes of clause (e) of sub-section (1) of section 7, the following particulars of every subscriber to the memorandum shall be filed with the Registrar:

(a) Name (including surname or family name) and recent Photograph affixed and scan with MOA and AOA:

(b) Father's/Mother's/ Spouse's name:

(c) Nationality:

(d) Date of Birth:

(e) Place of Birth (District and State):

(f) Occupation:

(g) Income-tax permanent account number:

(h) Permanent residential address and also Present address (Time since residing at present address and address of previous residence address (es) if stay of present address is less than one year) similarly the office/business addresses :

(i) Email id of Subscriber

(j) Mobile No. of Subscriber

(k) Phone No. of Subscriber

(l) Fax no. of Subscriber

Explanation: - information related to (i) to (l) shall be of the individual subscriber and not of the professional *engaged in the incorporation of the company.*

(m) Proof of Identity:

- For Indian Nationals:

- PAN Card (mandatory) and any one of the following
- Voter's identity card
- Passport copy
- Driving License copy
- Unique Identification Number (UIN)

- For Foreign nationals and Non Resident Indians :

- Passport
- Others.

(n) Residential proof such as Ration Card, Voter's card, Driving licence, Passport, Unique Identification Number (UIN), Registered Rent Agreement etc AND Bank Statement, Electricity Bill, Telephone / Mobile Bill etc.

Provided that Bank statement Electricity bill, Telephone / Mobile bill shall not be more than two months old.

(o) Proof of nationality in case the subscriber is a foreign national.

(p) Each subscriber (including first directors of the company) to the MOA and AOA shall furnish the specimen signature duly verified by their respective banker at the time of incorporation

Explanation: - the specimen signature shall be in the prescribed **form no 2.32**.

(q) If the subscriber is already a director or promoter of a company(s), the following details:

(i) Name of the company

(ii) CIN

(iii) Whether interested as a director or promoter

(2) Where the subscriber to the memorandum is a body corporate then the following particulars shall be filed with the Registrar:-

(a) CIN of the Company / Registration No of the body corporate, if any

(b) GLN, if any

(c) Name of the body corporate

(d) Registered office address/ principal place of business

(e) E-mail Id

(f) If the body corporate is a company, certified true copy of the board resolution specifying inter alia the authorization to subscribe to the memorandum of association of the proposed company and to make investment in the proposed company, the number of shares proposed to be subscribed by the body corporate, and the name, address and designation of the person authorized to subscribe to the Memorandum. If the body corporate is a limited liability partnership, certified true copy of the resolution agreed to by all the partners specifying *inter alia* the authorization to subscribe to the memorandum of association of the proposed company and to make investment in

the proposed company, the number of shares proposed to be subscribed in the body corporate, and the name of the partner authorized to subscribe to the Memorandum.

(g) Particulars as prescribed above for subscribers in terms of Section 7(1)(e) for the person subscribing for body corporate.

(h) In case of foreign bodies corporate, following additional details to be submitted:-

i) copy of certificate of incorporation of the foreign body corporate; and

ii) registered office address along with proof.

Particulars of first directors of the company and their consent to act as such.

2.14. For the purposes of clauses (f) and (g) of sub-section (1) of section 7, the particulars of each person mentioned in the articles as first director of the company and his interest in other firms or bodies corporate along with his consent to act as director of the company shall be filed in Form No. 2.12 with the fee as provided in Annexure 'B'.

Certificate of incorporation.

2.15. For the purposes of sub-section (2) of section 7, the Certificate of Incorporation shall be issued by the Registrar in Form No. 2.13.

Formation of companies with charitable objects etc.

License under section 8 for new or existing companies with charitable objects etc.

2.16.(1) Powers under section 8 of the Act of the Central Government are Delegated to the Registrar having Jurisdiction over the area where the Registered office of the company is proposed to be situated.

(2) A person or an association of persons (hereinafter referred to in this rule as "the proposed company"), desirous of being incorporated as a company with limited liability under sub-section (1) of section 8 without the addition to its name of the word "Limited", or as the case may be, the words "Private Limited", shall make an application in Form No. 2.14 (Part A) along with the fee as provided in Annexure 'B' to the Registrar for a license under sub-section (1) of section 8.

(3)The memorandum of association of the proposed company shall be in Form No. 2.17.

(4) The application under sub-rule (1) shall be accompanied by the following documents, namely:—

(a) draft memorandum and articles of association of the proposed company;

(b) a declaration in Form No. 2.15 by an Advocate, a Chartered Accountant, Cost Accountant or Company Secretary in practice, that the draft memorandum and articles of association have been drawn up in conformity with the provisions of section 8 and rules made thereunder and that all the requirements of the Act and the rules made thereunder relating to registration of the company under section 8 and matters incidental or supplemental thereto have been complied with;

(c) an estimate of the annual income and expenditure of the proposed company for the next three years, specifying the sources of the income and the expenditure plans;

(d) an estimate of the future annual income and expenditure of the company for next three years, specifying the sources of the income and the objects of the expenditure;

(e) a declaration by each of the persons making the application in Form No. 2.16;

(f) a copy of the board resolution / members' resolution.

(4) A limited company registered under this Act or under any previous company law, with any of the objects specified in clause (a) of sub-section (1) of section 8 and the restrictions and prohibitions as mentioned respectively in clause (b) and (c) of that sub-section, and which is desirous of being registered under section 8, without the

addition to its name of the word "Limited" or as the case may be, the words "Private Limited", shall make an application in Form No. 2.14 (Part B) along with the fee as provided in Annexure 'B' to the Registrar for a licence under sub-section (5) of section 8.

(5) The application under sub-rule (4) shall be accompanied by the following documents:

(a) memorandum and articles of association of the company;

(b) declaration as given in Form No. 2.15 by an Advocate, a Chartered accountant, Cost Accountant or Company Secretary in Practice, that the memorandum and articles of association have been drawn up in conformity with the provisions of section 8 and rules made thereunder and that all the requirements of the Act and the rules made thereunder relating to registration of the company under section 8 and matters incidental or supplemental thereto have been complied with;

(c) the following documents submitted by the company in general meeting for each of the two financial years immediately preceding the date of the application, or when the company has functioned only for one financial year, for such year—

(i) the financial statements,

(ii) the Board's reports, and

(iii) the audit reports;

(d) a statement showing in detail the assets (with the values thereof), and the liabilities of the company, as

on the date of the application or within thirty days preceding that date;

(e) an estimate of the future annual income and expenditure of the company for next three years, specifying the sources of the income and the objects of the expenditure;

(f) certified copy of the resolutions passed in general/ board meetings approving registration of the company under section 8; and

(g) a declaration by each of the persons making the application in Form No. 2.16.

General conditions to be complied with by companies to be registered under section 8.

2.17. (1) The applicant shall, within a week from the date of making the application to the Registrar, publish a notice at his own expense, and a copy of the notice, as published, shall be sent forthwith to the Registrar. The said notice shall be in Form No. 2.18 and shall be published:

(a) at least once in a vernacular newspaper in the principal vernacular language of the district in which the registered office of the proposed company is to be situated or is situated, and circulating in that district, and at least once in English language in an English newspaper circulating in that district; and

(b) on the websites as may be notified by the Central Government.

(2) The Registrar may require the applicant to furnish the approval or concurrence of any appropriate authority, regulatory body, department or Ministry of the Central or State Government(s).

(3) The Registrar shall, after considering the objections, if any, received by it within thirty days from the date of publication of notice, and after consulting any authority, regulatory body, Department or Ministry of the Central or State Government(s), as it may, in its discretion, decide whether the license should or should not be granted.

(4) The licence shall be in Form No. 2.19 or Form No. 2.20, as the case may be, and the Registrar shall have power to include in the licence such other conditions as may be deemed necessary by him. The Registrar may direct the company to insert in its memorandum, or in its articles, or partly in one and partly in the other, such conditions of the license as may be specified by the Registrar in this behalf.

Conditions for conversion of a company registered under Section 8 into a company of any other kind.

2.18. (1) For the purposes of sub-clause(ii) of sub-section (4) of section 8, a company registered under section 8 which intends to convert itself into a company of any other kind shall pass a special resolution at a general meeting for approving such conversion. The explanatory statement annexed to the notice convening the general meeting shall

set out in detail the reasons for opting for such conversion including the following:

a) Date of incorporation of the company;

b) The principal objects of the company as set out in the memorandum of association;

c) Reasons as to why the activities for achieving the objects of the company cannot be carried on in the current structure i.e. as a section 8 company;

d) If the principal/main objects of the company are proposed to be altered, what would be the altered objects and the reasons for the alteration;

e) What are the privileges/concessions currently enjoyed by the company, such as tax exemptions, approvals for receiving donations/contributions including foreign contributions, land and other immovable properties, if any, that were acquired by the company at concessional rates/prices or gratuitously and, if so, the market prices prevalent at the time of acquisition and the price that was paid by the company, details of any donations or bequests received by the company with conditions attached to their utilization etc.

f) What would be the impact of the proposed conversion on the members of the company including details of any benefits that may accrue to the members as a result of the conversion.

(2) A certified true copy of the special resolution along with a copy of the Notice convening the meeting including the explanatory statement shall be filed with the Registrar in

Form No. 7.14 along with the fee as provided in Annexure 'B'.

(3) The company shall file an application in Form No. 2.21 with the Regional Director with the fee as provided in Annexure C along with a certified true copy of the special resolution and a copy of the Notice convening the meeting including the explanatory statement for approval for converting itself into a company of any other kind.

(4) A copy of the application with annexures as filed with the Regional Director shall also be filed with the Registrar.

2.19. Other conditions to be complied with by companies registered under section 8 seeking conversion into any other kind.

(1) The company shall, within a week from the date of submitting the application to the Regional Director, publish a notice at its own expense, and a copy of the notice, as published, shall be sent forthwith to the Regional Director. The said notice shall be in Form No. 2.22 and shall be published:

(a) at least once in a vernacular newspaper in the principal vernacular language of the district in which the registered office of the company is situated, and having a wide circulation in that district, and at least once in English language in an English newspaper having a wide circulation in that district;

(b) on the website of the company, if any, and as may further be notified/directed by the Central Government.

(2) The company shall send a copy of the notice, simultaneously with its publication, together with a copy of the application and all attachments by registered post or hand delivery, to the Chief Commissioner of Income Tax having jurisdiction over the company, Income Tax Officer who has jurisdiction over the company, the Charity Commissioner, the Chief Secretary of the State in which the registered office of the company is situated, any organisation or Department of the Central Government or State Government or other authority under whose jurisdiction the company has been operating. If any of these authorities wish to make any representation to Regional Director, it shall do so within sixty days of the receipt of the notice.

(3) The Board of directors shall give a declaration to the effect that no portion of the income or property of the company has been or shall be paid or transferred directly or indirectly by way of dividend or bonus or otherwise to persons who are or have been members of the company or to any one or more of them or to any persons claiming through any one or more of them.

(4) Where the company has obtained any special status, privilege, exemption, benefit or grant(s) from any authority such as Income Tax Department, Charity Commissioner or any organisation or Department of Central Government, State Government, Municipal Body or any recognized authority, a "No Objection Certificate" must be obtained, if required under the terms of the said special status, privilege, exemption, benefit or grant(s) from the concerned authority and filed with the Regional Director, along with the application.

(5) The company should have filed all its financial statements and Annual Returns upto the financial year preceding the submission of the application to the Regional Director and all other returns required to be filed under the Act up to the date of submitting the application to the Regional Director.

(6) The company shall attach with the application a certificate from practicing Chartered Accountant/ Company Secretary in practice/ Cost Accountant certifying that the conditions laid down in the Act and these rules relating to conversion of a company registered under section 8 into any other kind of company, have been complied with.

(7) The Regional Director may require the applicant to furnish the approval or concurrence of any particular authority for grant of his approval for the conversion.

(8) On receipt of the application, and on being satisfied , the Regional Director shall issue an order approving the conversion of the company into a company of any other kind subject to such terms and conditions as may be imposed in the facts and circumstances of each case including the following conditions:

a) The company shall give up and shall not claim, with effect from the date its conversion takes effect, any special status, exemptions or privileges that it enjoyed by virtue of having been registered under the provisions of section 8;

b) If the company had acquired any immovable property free of cost or at a concessional cost from any government or authority, it may be required to pay the difference between the cost at which it acquired such property and the market price of such property at the time of conversion either to the government or to the authority that provided the immovable property;

c) Any accumulated profit or unutilized income of the company brought forward from previous years shall be first utilized to settle all outstanding statutory dues, amounts due to lenders claims of creditors, suppliers, service providers and others including employees and lastly any loans advanced by the promoters or members or any other amounts due to them and the balance, if any, shall be transferred to the Investor Education and Protection Fund. within thirty days of receiving the approval for conversion;

Before imposing the conditions or rejecting the application, the company shall be given a reasonable opportunity of being heard by the Regional Director

(9) On receipt of the approval of the Regional Director,

(i) The company shall convene a general meeting of its members to pass a special resolution for amending its memorandum of association and articles of association as required under the Act consequent to the conversion of the section 8 company into a company of any other kind.

(ii) The Company shall thereafter file with the Registrar:

a) a certified copy of the approval of the Regional Director

b) Amended memorandum of association and articles of association of the company.

c) A declaration by the directors that the conditions, if any imposed by the Regional Director have been fully complied with.

(10) On receipt of the documents referred to in sub rule (4) above, the Registrar shall register the documents and issue the fresh Certificate of Incorporation.

Intimation to Registrar of revocation of licence issued under section 8.

2.20. For the purposes of sub-section (6) of section 8, where the licence granted to a company registered under section 8 has been revoked, the company shall apply to the Registrar in Form No. 2.23 along with the fee as provided in Annexure 'B' to convert its status and change of name accordingly.

Declaration at the time of commencement of business.

2.21. For the purposes of clause (a) of sub-section (1) of section 11, the declaration filed by a director shall be in Form No. 2.24 along with the fee as provided in Annexure 'B' and the contents of the form shall be verified by a Company Secretary in practice or a Chartered Accountant or a Cost Accountant:

Provided that in the case of a company requiring registration and/or approval from other regulators or professional body which regulates such professional activity, the declaration referred above shall also be accompanied with a certificate of registration/Approval issued to it by the concerned regulator, or professional body.

Verification of registered office.

2.22. For the purposes of sub-section (2) of section 12 -

(1) the verification of the registered office shall be filed in Form No. 2.25 along with the fee as provided in Annexure 'B'; and

(2) there shall be attached to Form No. 2.25, any of the following documents, namely -

(a) Registered document of the title of the premises of the registered office in the name of the company; or

(b) Notarized copy of lease / rent agreement in the name of the company along with a copy of rent paid receipt not older than one month;

(c) Authorization from the owner or authorized occupant of the premises along with proof of ownership or occupancy authorization, to use the premises by the company as its registered office. AND

(d) Document of connection of any utility service like telephone, gas, electricity, etc. depicting the address of the premises in the name of the owner/document as the case may be which is not older than 2 months.

(3) There shall be attached to Form No. 2.25 the list of all other companies with their CIN, having the same unit/tenement/premises as their registered office address.

Publication of name by company.

2.23. For the purposes of clause (d) of sub-section (3) of section 12, the Central Government may as and when required, notify the other documents on which the name of the company shall be printed.

Notice and verification of change of situation of the registered office.

2.24. For the purposes of sub-section (4) of section 12, notice of change of the situation of the registered office and verification thereof shall be filed in Form No. 2.25 along with the fee as provided in Annexure 'B' and there shall be attached to Form No. 2.25, and the similar documents and manner of verification as are prescribed for verification of Registered office on incorporation as above in terms of section12 (2)

Shifting of registered office within the same State

2.25. (1) For the purposes of proviso of sub-section (5) of section 12, an application seeking confirmation from the Regional Director for shifting the registered office within the same State from the jurisdiction of one Registrar of Companies to the jurisdiction of another Registrar of Companies, shall be filed by the company with the Regional Director in Form No. 2.26 along with the fee as provided in Annexure 'C'.

(2) The company shall, not less than one month before filing any application with the Regional Director for the change of registered office,

(a) publish a notice, at least once in a daily newspaper published in English and in the principal language of that district in which the registered office of the company is situated and circulating in that district and

(b) serve individual notice on each debenture holder, depositor and creditor of the company;

clearly indicating the matter of application and stating that any person whose interest is likely to be affected by the proposed alteration of the memorandum may intimate his nature of interest and grounds of opposition to the Regional Director with a copy to the company within twenty one days of the date of publication of that notice:

Provided further that in case no objection is received by the Regional Director within twenty one days from the date of service or publication of the notice, the person concerned shall be deemed to have given his consent to the change of registered office proposed in the application:

Provided also that the shifting of registered office shall not be allowed if any inquiry, inspection or investigation has been initiated against the company or any prosecution is pending against the company under the Act.

Alteration of Memorandum by change of name.

2.26. (1) Change of name shall not be allowed to a company which has defaulted in filing its Annual Returns or Financial Statements or any document due for filing with the Registrar or which has defaulted in repayment of matured deposits or debentures or interest on deposits or debentures.

(2) For the purposes of sub-section (3) of section 13, a new certificate of incorporation in Form 2.27 shall be issued to the company consequent upon change of name.

Shifting of registered office from one State to another State. Application under section 13.

2.27. (1) An application under sub-section (4) of section 13, for the purpose of seeking approval for alteration of memorandum with regard to the change of place of the registered office from one State to another, shall be filed with the Central Government in Form No. 2.28 along with the fee as provided in Annexure 'C' and shall be accompanied by the following documents:

(a) Copy of the memorandum and articles of association.

(b) Copy of the notice convening the general meeting along with relevant Explanatory Statement.

(c) Copy of the special resolution sanctioning the alteration by the members of the company.

(d) Copy of the minutes of the general meeting at which the resolution authorizing such alteration was passed, giving details of the number of votes cast in favor or against the resolution.

(e) Affidavit verifying the application.

(f) List of creditors and debenture holders entitled to object to the application.

(g) Affidavit verifying the list of creditors.

(h) Bank draft evidencing payment of application fee.

(i) Copy of Board Resolution or the executed Vakalatnama, as the case may be.

(2) There shall be attached to the application, a list of creditors and debenture holders, drawn up to the latest practicable date preceding the date of filing of application by not more than one month, setting forth the following details:

(a) the names and address of every creditor and debenture holder of the company;

(b) the nature and respective amounts due to them in respect of debts, claims or liabilities:

Provided that the applicant company shall file an affidavit, signed by the Company Secretary of the company, if any and not less than two directors of the company, one of whom shall be a managing director, where there is one, to the effect that they have made a full enquiry into the affairs of the company and, having done so, have formed an opinion that the list of creditors is correct, and that the estimated value as given in the list of the debts or claims payable on a contingency or not ascertained are proper estimates of the values of such debts and claims and that there are no other debts of or claims against the company to their knowledge.

(3) There shall also be attached to the application an affidavit from the directors of the company that no employee shall be retrenched as a consequence of shifting of the registered office from one state to another state.

(4) A duly authenticated copy of the list of creditors shall be kept at the registered office of the company and any person desirous of inspecting the same may, at any time during the ordinary hours of business, inspect and take extracts from the same on payment of a sum not exceeding ten rupees per page to the company.

(5) There shall also be attached to the application a copy of the acknowledgment of service of a copy of the application with complete annexures to the Registrar and Chief Secretary of the state where the registered office is situated at the time of filing the application.

(6) The company shall at least 14 days before the date of hearing:

(a) advertise the application in the specified form in a vernacular newspaper in the principal vernacular language in the district in which the registered office of the company is situated, and at least once in English language in an English newspaper circulating in that district;

(b) serve, by registered post with acknowledgement due, individual notice(s), to the effect set out in clause (a) above on each debenture-holder and creditor of the company; and

(c) serve, by registered post with acknowledgement due, a notice together with the copy of the application to the Registrar and to the Securities and Exchange Board, in the case of listed companies and to the regulatory body, if the company is regulated under any special act.

(7) Where any objection of any person whose interest is likely to be affected by the proposed application has been received by the applicant, it shall serve a copy thereof to the Central Government on or before the date of hearing.

(8) Where no objection has been received from any of the parties, who have been duly served, the application may be put up for orders without hearing.

(9) Before confirming the alteration, the Central Government shall ensure that, with respect to every creditor and debenture holder who, in the opinion of the Central government, is entitled to object to the alteration, and who signifies his objection in the manner directed by the Central government, either his consent to the alteration has been obtained or his debt or claim has been discharged or has determined, or has been secured to the satisfaction of the Central Government.

(10) The Central Government may make an order confirming the alteration on such terms and conditions, if any, as it thinks fit, and may make such order as to costs as it thinks proper:

Provided that the shifting of registered office shall not be allowed if any inquiry, inspection or investigation has been initiated against the company or any prosecution is pending against the company under the Act.

2.28. For the purposes of sub-section (7) of section 13, the certified copy of the order of the Central Government, approving the alteration of the memorandum for transfer of registered office of the company from one State to another, shall be filed in Form No. 2.29 along with the fee as provided in Annexure 'B' with the Registrar of each of the States within thirty days from the date of receipt of certified copy of the order.

Change of objects for which money is raised through prospectus.

2.29. (1) For the purposes of sub-section (8) of section 13, where the company has raised money from public through prospectus and has any unutilized amount out of the money so raised, it shall not change the objects for which the money so raised is to be applied unless a special resolution is passed through postal ballot and the notice in respect of the resolution for altering the objects shall contain the following particulars:

(a) total money received;

(b) total money utilized for the objects stated in the prospectus;

(c) unutilized amount out of the money so raised through prospectus,

(d) particulars of the proposed alteration/ change in the objects;

(e) justification for the alteration/change in the objects;

(f) amount proposed to be utilized for the new objects;

(g) estimated financial impact of the proposed alteration on the earnings and cash flow of the company;

(h) other relevant information which is necessary for the members to take an informed decision on the proposed resolution;

(i) place from where any interested person may obtain a copy of the notice of resolution to be passed.

(2) For the purposes of clause (i) of sub-section (8) of section 13, the advertisement giving details of the resolution to be passed for change in objects shall be in Form No. 2.30, which shall be published simultaneously with the dispatch of postal ballot notices to shareholders.

(3) The notice shall also be placed on the website of the company, if any.

Alteration of articles.

2.30. For the purposes of sub-section (2) of section 14, a copy of the order of the Tribunal approving the alteration, shall be filed with the Registrar in Form No. 2.31 with fee as provided in Annexure 'B' together with the printed copy of the altered articles within fifteen days of the receipt of the order from the Tribunal.

Copies of memorandum and articles, etc. to be given to members on request being made by them.

2.31. For the purposes of sub-section (1) of section 17, a company shall on payment of fee as provided in Annexure 'B', send a copy of each of the following documents to a member within seven days of the request being made by him-

(1) the memorandum;

(2) the articles, if any;

(3) every agreement and every resolution referred to in sub-section (1) of section 117, if and so far as they have not been embodied in the memorandum and articles.

Service of documents.

2.32. (1) For the purposes of sub-section (1) of section 20, a document may be served on a company or an officer thereof through electronic transmission.

(2) For the purposes of sub-rule (1) of this rule, "electronic transmission" means a communication–

(a) delivered by –

(i) facsimile telecommunication or electronic mail when directed to the facsimile number or electronic mail address, respectively, which the company or the officer has provided from time to time for sending communications to the company or the officer respectively;

(ii) posting of an electronic message board or network that the company or the officer has designated for such communications, and which transmission shall be validly delivered upon the posting; or

(iii) other means of electronic communication,

in respect of which the company or the officer has put in place reasonable systems to verify that the sender is the person purporting to send the transmission, and

(b) that creates a record that is capable of retention, retrieval and review, and which may thereafter be rendered into clearly legible tangible form.

(3) For the purposes of sub-section (2) of section 20, a document may be served on the Registrar or any member through electronic transmission.

(4) For the purposes of sub-rule (3) of this rule, "electronic transmission" means a communication –

(a) delivered by –

(i) facsimile telecommunication or electronic mail when directed to the facsimile number or electronic mail address, respectively, which the Registrar or the member has provided from time to time for sending communications to the Registrar or the member respectively;

(ii) posting of an electronic message board or network that the Registrar or the member has designated for those communications, and which transmission shall be validly delivered upon the posting, or

(iii) other means of electronic communication

in respect of which the Registrar or the member has put in place reasonable systems to verify that the sender is the person purporting to send the transmission, and

(b) that creates a record that is capable of retention, retrieval and review, and which may thereafter be rendered into clearly legible tangible form.

(5) For the purposes of sub-section (1) and (2) of section 20, 'courier' means a document sent through a courier which provides proof of delivery.

Draft Rules under Companies Act, 2013

CHAPTER IX

ACCOUNTS OF COMPANIES

9.1 For the purposes of the second proviso to sub-section (1) of section 128 of the Act:

(1) The books of accounts or other relevant records/ information maintained in electronic mode shall remain accessible in India so as to be usable for subsequent reference;

(2) They shall be retained completely in the format in which they were originally generated, sent or received, or in a format which shall present accurately the information generated, sent or received and present in the same form as it was received. The information contained in the electronic records shall remain complete and unaltered.

(3) The information in the electronic record of the document shall be capable of being displayed in a legible form; and

(4) There is a proper system for storage, retrieval, display or printout of the electronic records and no such records shall be disposed off or rendered unusable, unless permitted by law.

Explanation :- For the purposes of this rule, "electronic mode" includes an electronic record as defined in clause (*t*) of sub-section (1) of section 2 of the Information Technology Act, 2000 (21 of 2000) and "books of accounts" shall have the meaning given to it under the Act.

9.2 For the purposes of sub-section (3) of section 128 of the Act

(1) Summarised returns of the books of accounts of the company maintained outside India shall be sent to the registered office at monthly or quarterly intervals as may be decided by the Board of directors, which shall be maintained and produced for inspection by directors.

(2) Where any other financial information maintained outside the country is required by a director, the director shall furnish a written request to the company setting out the full details of the financial information sought, the period for which such information is sought and reasons as to why such financial information is required.

(3)The Company shall produce such financial information to the director within fifteen days of the date of receipt of the written request.

(4) The financial information required under sub-rule (2) and (3) above shall be sought for by the director himself and not by or through his power of attorney holder or agent or representative.

9.3 (1) For the purposes of sub-section (1) of section 129, the class of companies as may be notified by the Central Government from time to time, shall mandatorily file their financial statements in Extensible Business Reporting Language (XBRL) format and the Central Government may specify the manner of such filing under such notification for such class of companies.

Explanation.- For the purposes of this Rule the term 'Extensible Business Reporting Language' means a standardized language for communication in electronic form to express, report or file financial information by companies under this rule.

(2) For the purposes of the first proviso to sub-section (3) of section 129 of the Act:

The statement containing the salient feature of the financial statement of a company's subsidiary or subsidiaries, associate company and joint venture shall be in Form 9.1:

9.4 For the purpose of the second proviso to sub-section (3) of section 129 of the Act, the Consolidation of financial statements of the company shall be made in accordance with the Accounting Standards, subject however, to the requirement that if under such Accounting Standards, consolidation is not required for the reason that the company has its immediate parent outside India, then such companies will also be required to prepare Consolidated Financial Statements in the manner and format as specified under Schedule III to the Act.

9.5 (1) For the purposes of sub-section (1) of section 131, the company shall apply to the Tribunal in Form No. 9.2.

(2) The application to the Tribunal shall be made within 2 weeks of the decision taken by the Board. In case the majority of the directors of the company or the auditor of the company has been changed immediately before the decision is taken to apply under section 131, the company shall disclose such fact in the application.

(3) The Tribunal will issue notice and hear the auditor of the original financial statement, if the present auditor is different.

(4) A certified copy of the Order of the Tribunal shall be filed with the Registrar within 30 days of the date of receipt of the certified copy in Form No.9.3.

(5) On receipt of approval from Tribunal a General Meeting may be called. Notice of such General meeting along with reasons for change in Financial Statements may be published in Newspaper in English and in vernacular language. In such General Meeting, the said revised financial statements, statement of directors and the statement of auditors may be put up for consideration before a decision is taken on adoption of the revised financial statements.

(6) On approval of the General Meeting, the revised financial statements along with the statement of auditors or revised report of the Board, as the case may be shall be filed with the Registrar within 30 days of the date of approval by the general meeting in Form No.9.4.

9.6 (1) For the purposes of clause (a) of sub-section (3) of section 131, the previous financial statement or report may be replaced by revised financial statement or revised report of the board, and supplemented by:

(a) A summarised statement of revisions effected
(b) The copy of the Order of the Tribunal.
(c) The revised auditor's report on the revised financial statement, if applicable

(2) It shall be ensured that the word "revised" is prefixed prominently on all the documents forming part of the revised financial statements / revised board report.

(3) Further, the revision shall be effected in accordance with the procedure prescribed in rule 9.5.

9.7 For the purposes of clause (b) of sub-section 3 of Section 131, the functions of the auditor pursuant to an order of the Tribunal allowing revision of the financial statement shall be as under:

(i) To carry out the audit procedures necessary in the changed circumstances.

(ii) To review the steps taken by the company to ensure that anyone who is in receipt of the previously issued financial statements together with the auditor's report thereon is informed of the situation.

(iii) To ensure that the revised audit report specifically refers to the revision of the financial statements.
(iv) To issue a revised auditor's report on the revised financial statements and sign the same.

(v) To ensure that the revised auditor's report contains a paragraph in bold explaining the reasons for the revision of the financial statements with cross reference to the earlier report issued by the auditor.

(vi) If the Auditor qualifies his report, the Board shall address the same in the manner provided in sub-section (3) of section 134 of the Act.

9.8 Where a company revises its financial statements in accordance with sub-section (1) of section 131, for the purposes of clause (c) of sub-section (3) of section 131:

(1) The proposed revision shall be presented to the directors who authenticated the original financial statements or Report of the Board and to the auditors who attested the said financial statements, and the opinion of the auditors, if any, shall be obtained and considered by the Board, before approving any revision of financial statements or report of the Board. Dissent and dissent vote, if any, at the Board meeting, on such revision of financial statements or report of the Board, should be recorded with reasons in the minutes of the meeting of the Board.

(2) The revision shall be reported upon by the auditor who is presently holding the position of auditor. However, if the original financial statement was audited by a different auditor, then, the revised financials shall be accompanied by a consent letter from the auditor who reported upon the financial statement which is sought to be revised. In case such auditor does not agree or the company is unable to procure the consent letter, reasons for such different opinion or inability to procure the consent shall be explained.

(3) It shall be the duty of the Board to send a copy of the revised financial statements and the revised auditor's report to the members, and in case of a listed company, to the stock exchange(s) and other regulatory authorities and it shall fix the date for convening general meeting for the approval of the revised financial statements and the revised auditor's report, or revised report of the Board, as the case may be.

(4) The revised financial statements or revised report of the Board shall be signed in the manner specified in section 134 of the Act. Any such revised financial statement or revised report of the Board shall be accompanied by the reasons justifying the proposed revision.

(5) The members shall approve the revised financial statements and the revised auditor's report at the general meeting.

(6) Management has to necessarily revise the financial statements for all the relevant period, subsequent to the financial year for which the revision of financial statement is sought to be made by the Board of Directors.

9.9 For the purposes of section 133, the standards of accounting as prescribed under the Companies Act, 1956 shall be deemed to be the

accounting standards until accounting standards are prescribed by the Central Government under section 133.

9.10 (1) For the purposes of section 134, Board Report shall be prepared based on the stand alone financial statements of the company and the report must contain a separate section wherein a report on the performance and financial position of each of the subsidiaries, associates and joint venture companies included in the consolidated financial statement is presented.

(2) For the purposes of clause (h) of sub-section (3) of section 134, the Report of the Board shall contain the particulars of contracts or arrangements with related parties referred to in sub-section (1) of section 188 in the Form No. 9.5:

(3) For the purposes of clause (m) of sub-section 3 of section 134, the report of the Board shall contain the following details:

(A) Conservation of energy:

Steps taken / impact on conservation of energy, with special reference to the following:

(i) steps taken by the company for utilising alternate sources of energy including waste generated

(ii) Capital investment on energy conservation equipments

(B) Technology absorption :

1. Efforts, in brief, made towards technology absorption.

2. Benefits derived as a result of the above efforts, e.g., product improvement, cost reduction, product development, import substitution, etc.

3. In case of imported technology (imported during the last 3 years reckoned from the beginning of the financial year), following information may be furnished :

(a) Details of technology imported.
(b) Year of import.
(c) Whether the technology been fully absorbed
(d) If not fully absorbed, areas where absorption has not taken place, and the reasons therefor.

4. Expenditure incurred on Research and Development

(C) Foreign exchange earnings and Outgo

Foreign Exchange earned in terms of actual inflows during the year
Foreign Exchange outgo during the year in terms of actual outflows

(4) Pursuant to clause (p) of sub-section 3 of section 134, every listed company and every other public company having a paid up share capital of Twenty Five crore rupees or more, calculated as at the end of the preceding financial year, shall include in the report by its Board of directors, a statement indicating the manner in which formal annual evaluation has been made by the Board of its own performance and that of its committees and individual directors.

(5) For the purpose of clause (q) of sub-section 3 of Section 134, the Report of the Board shall also provide the following information:

(i) financial summary/highlights;

(ii) change in the nature of business, if any;
(iii) Details of directors or key managerial personnel who were appointed or have resigned during the year;
(iv) Names of companies which have become or ceased to be its Subsidiaries, joint ventures or associate companies during the year alongwith reasons therefor;
(v) Details relating to Deposits covered under Chapter V of the Act:

(a) Accepted during the year;
(b) remained unpaid or unclaimed as at the end of the year;
(c) whether there has been any default in repayment of deposits or payment of interest thereon during the year and if so, number of such cases and the total amount involved:
    i. at the beginning of the year
    ii. maximum during the year
    iii. at the end of the year
(d) Details of deposits which are not in compliance with the requirements of Chapter V of the Act

(vi) Details of significant and material orders passed by the Regulators or courts or tribunals impacting the going concern status and company's operations in future.

9.11 For the purposes of clause (a) of sub-section (4) of section 135, the disclosure of contents of Corporate Social Responsibility Policy in the Board's report and on the company's website, if any, shall be in the Form specified under Companies (CSR) Rules, 2013

9.12 For the purpose of first proviso to sub-section (1) of section 136, the statement shall be in Form No. 9.6.

9.13 For the purpose of the second proviso to sub-section (1) to section 136 of the Act, in case of all listed companies and such public companies which have a net worth of more than one crore rupees and turnover of more than ten crore rupees, the financial statements may be sent:

(a) by electronic mode to such members who have positively consented in writing for receiving by electronic mode; and

(b) by despatch of physical copies by any other recognised mode of delivery as specified under section 20 of the Act, in all other cases.

9.14 The fees or additional fees referred to in sub-section (1) to section 137 and in the second proviso to the said sub-section and in sub-section (2) of the said section shall be as specified in Annexure B.

9.15 (1) For the purpose of sub-section (1) of section 138 of the Act, the following class of companies shall be required to appoint an internal auditor or a firm of internal auditors:-

(a) every listed company

(b) every public company having paid up share capital of Rupees ten crores or more;

(c) every other public company which has any outstanding loans or borrowings from banks or public financial institutions exceeding twenty five crore rupees or which has accepted deposits of twenty five crore rupees or more at any point of time during the last financial year.

(2) For the purpose of sub-section (2) of section 138 of the Act, the Audit Committee of the company or the Board shall, in consultation with

the Internal Auditor, formulate the scope, functioning, periodicity and methodology for conducting the internal audit.

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Proposed Draft Corporate Social Responsibility Rules under Section 135 of the Companies Act, 2013

Guiding Principle

CSR is the process by which an organization thinks about and evolves its relationships with stakeholders for the common good, and demonstrates its commitment in this regard by adoption of appropriate business processes and strategies. Thus CSR is not charity or mere donations.

CSR is a way of conducting business, by which corporate entities visibly contribute to the social good. Socially responsible companies do not limit themselves to using resources to engage in activities that increase only their profits. They use CSR to integrate economic, environmental and social objectives with the company's operations and growth.

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……

In exercise of the powers conferred under clause (o) and clause (q) of sub-section 3 of Section 134 read with Section 135 and sub-sections (1) and (2) of section 469 of the Companies Act, 2013 the Central Government hereby makes the following Rules namely:

PART I

Short title and commencement

1. These rules may be called the Corporate Social Responsibility Rules, 2013.

2. They shall come into force on the date of their publication in the official gazette and shall be applicable from the financial year 2014-15.

Definition:

3. In these Rules, unless the context otherwise requires:-

   (a) 'Act' means Companies Act, 2013;
   (b) 'Corporate Social Responsibility' means Corporate Social Responsibility (CSR) as defined in Section 135 of the Companies Act 2013;
   (c) 'Ministry' means the Ministry of Corporate Affairs;

(d) ***'Net Profit'*** for the section 135 and these rules shall mean, net profit ***before*** tax as per books of accounts and shall not include profits arising from branches outside India.

(e) 2% CSR spending would be computed as 2% of the average net profits made by the company during every block of three years. For the purpose of First CSR reporting the Net Profit shall mean average of the annual net profit of the preceding three financial years ending on or before 31 March 2014.

(f) Reporting will be done on an annual basis commencing from FY 2014-15.

(g) Tax treatment of CSR spend will be in accordance with the IT Act as may be notified by CBDT.

(h) Words and expressions used in these Rules and not defined herein but defined in the Act shall have the meaning respectively assigned to them in the Act.

PART II

Operating Provisions of the Rules

1. CSR activities may generally be conducted as projects or programmes (either new or ongoing) excluding activities undertaken in pursuance of the normal course of business of a company. The CSR Committee constituted under sec. 135(1), shall prepare the CSR Policy of the company which shall include the following:

a. specify the projects and programmes that are to be undertaken.

b. prepare a list of CSR projects/programmes which a company plans to undertake during the implementation year , specifying modalities of execution in the areas/sectors chosen and implementation schedules for the same.

c. CSR projects/programmes of a company may also focus on integrating business models with social and environmental priorities and processes in order to create shared value.

d. CSR Policy of the company should provide that surplus arising out of the CSR activity will not be part of business profits of a company.

e. *CSR Policy would specify that the corpus would include the following: a. 2% of the average net profits, b. any income arising therefrom c. surplus arising out of CSR activities.*

2. The CSR Committee, shall prepare a transparent monitoring mechanism for ensuring implementation of the projects / programmes / activities proposed to be undertaken by the company.

3. Where a company has set up an organization which is registered as a Trust or Section 8 Company, or Society or Foundation or any other form of entity operating *within India* to facilitate implementation of its CSR activities in accordance with its stated CSR Policy, the following shall apply:

a. The contributing company would need to specify the projects/programmes to be undertaken by such an organization, for utilizing funds provided by it;
b. The contributing company shall establish a monitoring mechanism to ensure that the allocation is spent for the intended purpose only;

4. A company may also conduct/implement its CSR programmes through Trusts, Societies, or Section 8 companies *operating* in India, which are not set up by the company itself.

5. Such spends may be included as part of its prescribed CSR spend only if such organizations have an established track record of at least three years in carrying on activities in related areas.

6. Companies may collaborate or pool resources with other companies to undertake CSR activities and any expenditure incurred on such collaborative efforts would qualify for computing the CSR spending.

7. Only such CSR activities will be taken into consideration as are undertaken within India.

8. Only activities which are not exclusively for the benefit of employees of the company or their family members shall be considered as CSR activity.

9. All companies falling under the provision of Section 135 (1) of the Act shall report, in the prescribed format, the details of their CSR initiatives in the Directors' Report and in the company's website.

Annexure - 1

FORMAT FOR THE ANNUAL REPORT ON CSR INITIATIVES TO BE INCLUDED IN THE BOARD REPORT BY QUALIFYING COMPANIES

1. Provide a brief outline of the company's CSR policy including the statement of intent reflecting the ethos of the company, broad areas of CSR interest and an overview of activities proposed to be undertaken.

2. Indicate the web-link to the CSR Policy. The Policy should include the full list of projects/activities/programmes proposed to be undertaken by the company.

3. The composition of the CSR Committee.

4. Average Net Profit of the company for last 3 financial years

5. Threshold Limit-(2% of this amount as in 4 above)

6. Details of CSR activities/projects undertaken during the year:
   a. total amount to be spent for the year: b. amount carried forward from earlier years: c. amount spent during the year as below: d. amount carried forward for the year.

1. Sr No.	**2.** CSR project/activity identified	**3.** Sector in which the Project is covere	**4.** Projects/Programmes 1.Local area/others-	**5.** Amount outlay (budget) project/	**6.** **Amount spent on the project/ progra**	**7.** Cumulative spend upto to the	8. Amount spent: Direct/through implementi

		d	2.specify the state /district (Name of the District/s, State/s where project/programme was undertaken	programme wise	**mme** Subheads: 1.Direct expenditure on project, 2.Overheads:	reporting period.	ng agency*
1.							
2.							
3.							
	TOTAL						

**Give details of implementing Agency:*

7. In case the company has failed to spend the 2% of the Average Net Profit (INR) of the last 3 financial years, please provide the reasons for not spending the amount

8. A Responsibility statement, of the CSR Committee, that the CSR policy implementation and monitoring thereof is, in letter and spirit, in compliance with CSR objectives.

Signed

……..

(CEO/Managing Director/Director)

……

(Chairman CSR Committee)

……

SCHEDULE VII

(See sections 135)

Activities which may be included by companies in their Corporate Social Responsibility Policies

Activities relating to:—

(i) eradicating extreme hunger and poverty;

(ii) promotion of education;

(iii) promoting gender equality and empowering women;

(iv) reducing child mortlity and improving maternal health;

(v) combating human immunodeficiency virus, acquired immune deficiency syndrome, malaria and other diseases;

(vi) ensuring environmental sustainability;

(vii) employment enhancing vocational skills;

(viii) social business projects;

(ix) contribution to the Prime Minister's National Relief Fund or any other fund set up by the Central Government or the State Governments for socio-economic development and relief and funds for the welfare of the Scheduled Castes, the Scheduled Tribes, other backward classes, minorities and women; and

(x) such other matters as may be prescribed.

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Draft Rules under Companies Act, 2013

CHAPTER VI
REGISTRATION OF CHARGES

Registration of creation or modification of charge.

6.1. (1) For registration of charge as provided in sub-section (1) of section 77 read with sections 78 and 79, the particulars of the charge together with a copy of the instrument, if any, creating or modifying the charge shall be filed in Form No. 6.1 with the Registrar, duly signed by the company and the charge holder along with the fee as specified in Annexure 'B.'

Provided that if the company fails to register a charge within the period of thirty days of its creation, the particulars of the charge together with a copy of the instrument, if any, creating or modifying the charge may be filed by the charge-holder, in Form No. 6.1 duly signed by him along with additional fee as specified in Annexure 'B'.

(2) For the purposes of the first proviso to sub-section (1) of section 77, a company shall pay such additional fees as specified in Annexure B.

(3) The charges requiring registration under this rule are:

(a) a charge created for the purpose of securing any issue of debentures or deposits;

(b) a charge on uncalled share capital of the company;

(c) a charge on any immovable property, wherever situate, or any interest therein;

(d) a charge on any book debt of the company;

(e) a charge, not being a pledge, on any movable property of the company;

(f) a floating charge on the undertaking or any property of the company including stock-in-trade;

(g) a charge on calls made but not paid;

(h) a charge on a ship or any share in a ship;

(i) a charge on intangible assets, including goodwill, patent, a licence under a patent, trade mark, copyright or a licence under a copyright.

(4) No charge by way of hypothecation of a motor vehicle shall require registration unless the financier, so requires. Provided the disclosures shall be given in the Balance Sheet regarding all such charges created by way of hypothecation of motor vehicles and the fact that charge has not been registered and the financiers have not required so.

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

(a) where the instrument or deed relates solely to the property situate outside India, the copy shall be verified by a certificate issued either under the seal

of the company, or under the hand of any director or company secretary of the company or an authorised officer of the charge holder or under the hand of some person other than the company who is interested in the mortgage or charge, stating that it is a true copy;

(b) where the instrument or deed relates, whether wholly or partly, to the property situate in India, the copy shall be verified by a certificate issued under the hand of any director or company secretary of the company or an authorised officer of the charge holder stating that it is a true copy.

Condonation of delay by Registrar.

6.2. For the purposes of first proviso to sub-section (1) of section 77 read with section 78, the Registrar may, on being satisfied that the company had sufficient cause for not filing the particulars and instrument of charge, if any, within a period of thirty days of the creation of the charge, allow the registration of the same after thirty days but within a period of three hundred days of such creation of charge on payment of additional fee as provided in Annexure 'B'. The application for condonation shall be supported by a declaration from the company by its secretary or director that such belated delay shall not adversely affect rights of any other creditors of the company.

6.3. The provisions of rule 6.2 shall apply *mutatis mutandis* to the registration of charge on any property acquired subject to such charge, modification of charge under section 79 and to the satisfaction of charge under section 82 of the Act.

Certificate of registration.

6.4. For the purposes of sub-section (2) of section 77:

(1) Where a charge is registered with the Registrar under sub-section (1) of section 77 or section 78, he shall issue a certificate of registration of such charge in Form No. 6.2.

(2) Where the particulars of modification of charge is registered under section 79, the Registrar shall issue a certificate of modification of charge in Form No. 6.3.

(3) The certificate issued by the Registrar under sub-rule (1) and sub-rule (2) above shall be conclusive evidence that the requirements of Chapter VI of the Act and the rules made thereunder as to registration of creation or modification of charge, as the case may be, have been complied with.

Register of charges to be kept by the Registrar.

6.5. (1) The particulars of charges maintained on the MCA portal shall be deemed to be the register of charges for the purposes of section 81.

(2) The register shall be open to inspection by any person on payment of fee as specified in Annexure 'B'.

Satisfaction of charge.

6.6. (1) For the purposes of sub-section (1) of section 82, a company shall within thirty days from the date of the

payment or satisfaction in full of any charge registered under Chapter VI, give intimation of the same to the Registrar in Form No. 6.4 along with the fee as specified in Annexure 'B'. in case of delay upto 300 days beyond 30 days the same procedure of condonation of delay by Registrar is to be followed like in case of Creation of Charge

(2) Where the Registrar enters a memorandum of satisfaction of charge in full in pursuance of section 82 or 83, he shall issue a certificate of registration of satisfaction of charge in Form No. 6.5.

Intimation of appointment of Receiver or Manager.

6.7. For the purposes of sub-section (1) of section 84, notice of appointment or cessation of a receiver of, or of a person to manage, the property, subject to charge, of a company shall be filed with the Registrar in Form No. 6.6 along with fee as specified in Annexure 'B'.

Company's register of charges.

6.8. (1) For the purposes of sub-section (1) of section 85, every company shall keep at its registered office a register of charges in Form No. 6.7 and enter therein particulars of all the charges registered with the Registrar (including floating charges) on any of the property, assets or undertaking of the company and the particulars of any property acquired subject to a charge as well as particulars of any modification of a charge and satisfaction of charge.

(2) The entries in the register of charges maintained by the company shall be made forthwith after the creation, modification or satisfaction of charge, as the case may be.

(3) Entries in the register shall be authenticated by the secretary of the company or any other person authorised by the Board for the purpose.

(4) The register of charges shall be preserved permanently and the instrument creating a charge shall be preserved for a period of eight years from the date of satisfaction of charge by the company.

6.9. For the purposes of clause (b) of sub-section (2) of section 85, the register of charges, instrument of charges, etc. kept by the company shall be open for inspection to any person (other than the member or creditor of the company) on payment of fee as specified in Annexure 'B'.

Condonation of delay by Central Government.

6.10. (1) For the purposes of section 87, where the instrument creating, modifying or satisfying a charge is not filed within three hundred days from the date of its creation (including acquisition of a property subject to a charge), modification or satisfaction, the Registrar shall not register the same unless the delay is condoned by the Central Government.

(2) The application for condonation of delay shall be filed with the Central Government in Form No. 6.8 along with the fee as specified in Annexure ‘C’.

Draft Rules under Companies Act, 2013

CHAPTER VIII
DECLARATION AND PAYMENT OF DIVIDEND

Declaration of dividend out of reserves.

8.1 For the purposes of second proviso to sub-section (1) of section 123, a company may declare dividend out of the accumulated profits earned by it in previous years and transferred by it to the reserves, in the event of inadequacy or absence of profits in any year, subject to the fulfillment of the following conditions :

(1) The rate of dividend declared shall not exceed the average of the rates at which dividend was declared by it in the three years immediately preceding that year;

(2) The total amount to be drawn from such accumulated profits shall not exceed an amount equal to one-tenth of the sum of its paid-up share capital and free reserves;

(3) The amount so drawn shall first be utilized to set off the losses incurred in the financial year before any dividend in respect of preference or equity shares is declared;

(4) The balance of reserves after such withdrawal shall not fall below fifteen per cent of its paid up share capital.

8.2 No company shall declare dividend unless the loss or depreciation, whichever is less, in previous years is set off against the profit of the company for the year for which dividend is declared or paid.

Statement of persons whose dividend is unpaid or unclaimed.

8.3 (1) For the purposes of sub-section (2) of section 124, where a company has transferred the amount of dividend remaining unpaid or unclaimed to Unpaid Dividend Account, it shall, within a period of ninety days of making such transfer, prepare and place on its website and on any other website approved by the Central Government in pdf format, a statement in Form No.8.1, in respect of such unpaid or unclaimed amount of dividend:

Provided that such a statement shall appear on the website in a prominent manner and shall be:

(a) accessible free of charge; and

(b) readable and made convenient for printing

Provided further that if such statement requires any particular version of software for accessing such statement, a facility to download the relevant version of the software shall be provided free of cost together with such statement, along with instructions for downloading such software and contact details of a responsible official of the company who can help to open, read and print the statement.

(2) Proper search facility shall, by name, be provided on the web-site to search the entries from the above stated statement.

(3) Such statements shall appear year-wise and, where dividend has been declared more than once in a financial year, for each declaration of dividend, on the website of the company or on any other website approved by the Central Government until the amount is transferred to the Fund established under sub-section (1) of section 125.

Statement to be furnished to the Fund.

8.4. (1) For the purposes of sub-section (5) of section 124, any money transferred to the Unpaid Dividend Account by a company in pursuance of sub-section (1) of section 124 which remains unpaid or unclaimed for a period of seven years from the date of such transfer and interest accrued, if any, thereon, shall be transferred to the Fund established under sub-section (1) of section 125.

(2) Any amount required to be credited by the company to the Fund under sub-rule (1), shall be remitted into the specified branches of State Bank of India or any other nationalized bank through which the amount can be credited to the Fund, within a period of thirty days of such amount becoming due to be credited to the Fund:

Provided that such amount shall be tendered by the company in such branches of State Bank of India or other nationalized bank along with a Challan (in triplicate) and

the Bank shall return to the company two copies of the Challan duly stamped as an acknowledgement of having received the amount:

Provided further that one copy of such duly stamped Challan evidencing deposit of the amount into the Fund shall be filed by the company with the Authority constituted in pursuance of sub-section (5) of section 125. The company shall fill in the full particulars of the amount tendered including the head of Account to which it has been credited.

Provided also that the Central Government may permit remittance of the amount in electronic mode.

(3) The company shall, along with the copy of the Challan as required in second proviso to sub-rule (2), furnish a statement in Form No. 8.2 containing details of such transfer to the Authority duly certified by a company secretary in practice or a chartered accountant or cost accountant :

(4)(a) On receipt of this statement, the Authority shall enter the details of such receipt in a register maintained by it in respect of each company every year and reconcile the amount so remitted and collected, with the concerned designated bank on monthly basis.

(b) Each designated bank shall furnish an abstract of such receipts during the month to the Authority within seven days after the close of every month.

(c) The company shall keep a record consisting of name, last known address, amount, folio number/client ID, certificate number, beneficiary details etc. of the persons in respect of whom unpaid or unclaimed amount has remained unpaid or unclaimed for a period of seven years and has been transferred to the Fund, for a period of eight years from the date of such transfer to the said Fund and the Authority shall have the powers to inspect such records.

(5) The provisions of this rule shall be applicable *mutatis mutandis* in respect of the amounts to be credited to the Fund in pursuance of clauses (h) to (m) of sub-section (2) of section 125.

Manner of transfer of shares in respect of which unpaid or unclaimed dividend has been transferred under sub-section (6) of section 124

8.5(1) For the purposes of sub-section (6) of section 124, all shares in respect of which unpaid or unclaimed dividend has been transferred under sub-section (5) of section 124 shall also be transferred by the company in the name of the Fund established under sub-section (1) of section 125 by following the procedure as given in the following rules. In case shares are held in electronic mode in any depository and the beneficial owner has encashed any dividend warrant during the last seven years, such shares shall not be required to be transferred to Investor Education and Protection

Fund even though some dividend warrants may not have been encashed.

(2) The shares shall be credited to an IEPF Suspense Account (name of the company) with one of the Depository Participants as may be notified by the Fund within a period of thirty days of such shares becoming due to be transferred to the Fund. For the purposes of effecting transfer of such shares, the Board shall authorise the company secretary or any other person to sign the necessary documents. The company shall follow the procedure as stated below:

(a) For the purposes of effecting the transfer where the shares are dealt with in a depository:

(i) the company secretary or the person authorised by the Board shall sign on behalf of such shareholders, the delivery instruction slips of the depository participants where the shareholders had their accounts for transfer in favour of IEPF Suspense Account (name of the company).

(ii) On receipt of the delivery instruction slips, the depository shall effect the transfer of shares in favour of the Fund in its records.

(b) For the purposes of effecting the transfer where the shares are held in physical form:

(i) the company secretary or the person authorised by the Board shall make an application, on behalf of the concerned shareholders, to the company, for issue of duplicate share certificates.

(ii) on receipt of the application, a duplicate certificate for each such shareholder shall be issued and it shall be stated on the face of it and be recorded in the Register maintained for the purpose, that the duplicate certificate is "*Issued in lieu of share certificate No..... for purpose of transfer to IEPF"*. Further, the word "duplicate" shall be stamped or punched in bold letters across the face of the share certificate.

(iii) Particulars of every share certificate issued as above shall be entered forthwith in a Register of Renewed and Duplicate Share Certificates maintained in Form No. 4.3 pursuant to rule 4.3(3).

(iv) After issue of duplicate share certificates, the company secretary or the person authorised by the Board, shall sign the necessary securities transfer Form No. 4.7, pursuant to section 56(1) & rule 4.9(1), for transferring the shares in favour of the Fund.

(v) On receipt of the duly filled transfer forms along with the duplicate share certificates, the Board or its committee shall approve the transfer and thereafter the transfer of shares shall be effected in favour of the Fund in the records of the company.

(3) The company/depository, as the case may be, shall preserve copies of the depository instruction slips, transfer deeds and duplicate certificates for its records.

(4) While effecting such transfer, the company shall send a statement to the Fund in form 8.3 containing details of such transfer duly certified by a company secretary in practice or a chartered accountant or a cost accountant.

(5) The voting rights on shares transferred to the Fund shall remain frozen until the rightful owner claims the shares.

(6) All benefits accruing on such shares e.g. bonus shares, split etc. shall also be credited to such IEPF suspense account (name of the company).

(7) The IEPF suspense account (name of the company) with depository participant, shall be maintained by the Fund, on behalf of the shareholders who are entitled for the shares and shares held in such account shall not be transferred or dealt with in any manner whatsoever except for the purposes of transferring the shares back to the claimant as and when he/she approaches the Fund. However in case the company is getting delisted IEPF shall surrender shares on behalf of the shareholders in accordance with the Securities and Exchange Board of India (Delisting of Equity Shares Regulations), 2009 and the proceeds realized shall be credited to the account of the shareholder.

(8) Any further dividend received by IEPF on such shares shall be credited to respective accounts of the shareholders maintained by IEPF.

(9) As and when a claimant approaches the Fund, the Fund shall refer to the respective company for verification of the details of the claimant against the details of shares. After proper verification of the claim and identity of the claimant by the company, the Fund shall either credit the shares which are lying with depository participant in IEPF suspense account (name of the company) to the demat account of the claimant to the extent of the claimant's entitlement and pay the unpaid dividends or in case of the physical certificates, cancel the duplicate certificate and transfer the shares in favour of the claimant and pay the unpaid dividends .

(10) For the purposes of rule 8.9, the company shall *inter alia* verify the following documents of the claimants:

(i) Documents for identification (Any two of the following):

- Income-tax permanent account number
- Voter's identity card number
- Passport number
- Driving License
- Unique Identification Number (UIN)

(ii) Documents for verification of number of shares:

- Folio number/Client ID

Power to direct payment of amount due to the Fund.

8.6. (1) The Authority may s*uo motu* call upon any company to pay the amount due to the Fund. If any company fails to pay

any amount due to the Fund, the Authority shall report the same to the Central Government.

(2) If the company fails to comply with the directions of the Authority, the company and the officers in default shall be punishable with fine which may extend to five thousand rupees and where the contravention is a continuing one, with further fine which may extend to five hundred rupees for every day of such failure to pay.

Refunds to claimants from Fund.

8.7. For the purposes of clause (a) of sub-section (3) and proviso to sub-section (3), of section 125, refund of the amount credited to the Fund shall be made in the following manner:-

(1) Any person, whose unclaimed dividend, matured deposits, proceeds of matured debentures, application money due for refund, or interest thereon, sale proceeds of fractional shares, redemption proceeds of preference shares, etc. has been transferred to the Fund, may apply for refund, to the Authority under clause (a) of sub-section (3) of section 125 or under proviso to sub-section (3) of section 125, by making an application in Form No. 8.4 under his own signature or through a person holding a valid power of attorney granted by him.

(2) The application for refund shall be accompanied by the following documents:

(a) An indemnity bond in Form No. 8.5 on a non-judicial stamp paper of the value applicable in the state of its execution:

Provided that the indemnity bond shall not be required to be submitted where the applicant is Central Government, a State Government, a Government company or a public financial institution within the meaning of the Act:

Provided further that the Authority may, where the amount claimed is not more than five thousand rupees and the claimant establishes his title to the money claimed to its satisfaction, issue an order sanctioning the payment of the amount due to the claimant without production of the indemnity bond.

(b) Document in support of the entitlement to the amount claimed e.g. letter from the company, dividend warrant etc.

(c) A stamped advance receipt bearing his signature and signatures of two witnesses.

(d) Proof of identity:

(i) For Indian Nationals:

Documents for identification (Any one of the following):

- Income-tax permanent account number
- Voter's identity card number
- Passport number
- Driving License

- Unique Identification Number (UIN)

Proof of address: (Any one of the following):

- Voter's identity card number
- Passport number
- Driving License
- Unique Identification Number (UIN)
- any of the following not older than two months:-
  - electricity bill,
  - telephone bill,
  - Bank account statement

(ii) For Foreign nationals and Non Resident Indians:

- Passport
- OCI and PI Card

(e) In the case of a deceased person, his legal representative who prefers the claim, shall furnish a succession certificate / probate / letter of administration (as applicable). In case the securities have to be transmitted to the name of the claimant, a certificate in this behalf from the company may be furnished.

(3) On receipt of the application, the authority shall verify from the records and certify whether the claimant is entitled to the money claimed by him:

Provided that an application, for refund of any amount from the General Revenue Account of the Central Government which had been transferred to the account under sub-section (5) of section 205A of the Companies Act, 1956 and which has been transferred to the Fund under clause (d) of sub-section (2) of section 125, shall be forwarded by the Authority to the concerned Registrar for verification:

Provided further that an application, for refund of any amount transferred to the Investor Education and Protection Fund under section 205C of the Companies Act, 1956 and which has been transferred to the Fund under clause (e) of sub-section (2) of section 125, shall be forwarded by the Authority to the concerned company for verification.

(4) After certification of the title of the claimant to the amount claimed, the Authority shall issue a payment order in Form No. 8.6 sanctioning the payment of the amount due to the claimant and issue and deliver the cheque in favor of the claimant.

(5) The Authority shall, in its records, cause a note to be made of all payments made under rule (4).

(6) An application received for refund of any claim under this rule shall be disposed of by the Authority within

thirty days from the date of receipt of the application of refund complete in all respects and any delay beyond thirty days shall be recorded in writing specifying the reasons for the delay and the same shall be communicated to the claimant in writing or by electronic means. In case of an incomplete application, a communication shall be sent to the claimant by the Authority detailing deficiencies of the application.

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DRAFT RULES UNDER COMPANIES ACT, 2013

CHAPTER X

AUDIT AND AUDITORS

Manner and procedure of selection of auditors

10.1 For the purpose of sub-section (1) of section 139,

(1) In the case of a company that has constituted an Audit Committee under section 177, the audit committee and in other case, the Board shall take into consideration, the qualifications and experience of the person proposed to be considered for appointment as auditor and whether these are commensurate with the size and requirements of the company.

The audit committee or the Board, as the case may be, shall also consider the completed and pending proceedings against the auditor before the Institute of Chartered Accountants of India or the National Financial Reporting Authority or Tribunal or any Court of law.

(2) Subject to the provisions of sub-rule (1) above, where a company has constituted an audit committee, the audit committee shall recommend the name of an individual or a firm as auditor to the Board. In other cases, the Board shall consider and recommend an individual or a firm as auditor to members in the annual general meeting for appointment.

(3) If the Board is satisfied with the recommendation of the audit committee, it shall consider and recommend the appointment of an individual or a firm as auditor to the members in the annual general meeting.

(4) If the board is not satisfied with the recommendation of the audit committee, it may send back the recommendation to the audit committee for reconsideration with their reasons.

(5) If the Audit Committee, after considering the reasons given by the Board, does not agree to reconsider its recommendation, the Board shall submit to the members its own recommendation for consideration of members and appointment of one of them as Auditors and shall explain the reasons for not accepting the recommendation of the audit committee in the Board's report.

(6)The members at the annual general meeting shall appoint auditor of the company who shall hold office from the conclusion of that meeting till the conclusion of the sixth annual general meeting, counting the current meeting as the first, which shall be subject to the ratification by members at every annual general meeting.

Conditions for Appointment

10.2 For the purposes of the second proviso to sub-section (1) of section 139, the proposed appointee shall submit a certificate that

(1) He or it is eligible for appointment and is not disqualified for appointment under the Act, the Chartered Accountants Act, 1949 and Rules and Regulations made therein.

(2) The proposed appointment is within the term allowed under the Act.

(3) The proposed appointment is within the limit laid down in the Act.

10.3 For the purposes of sub-section (2) of Section 139, the class of companies class in which auditor will rotated is under consideration.

Manner in which the companies to rotate their auditors on the expiry of term

10.4 For the purpose of sub-section(4) of Section 139:

(1) The audit committee of a company, constituted under Section 177 of the Act shall recommend to the Board, the name of individual auditor or the audit firm who may be rotated in the place of the present incumbent on the expiry of his or their term.

(2) Where a company has constituted an audit committee, the Board shall consider the recommendation of the audit committee, and in other cases, the Board shall itself consider the matter of rotation of auditors. Thereafter, it shall propose to the members for consideration in general meeting, the names of outgoing and incoming auditor or audit firm.

(3) The members at the annual general meeting shall consider the proposal for rotation at the meeting and appoint the auditor or audit firm in the manner specified in Rule 10.1

(4) For the purpose of the rotation of auditors

(i) In case of an auditor (whether an individual or audit firm), the period for which he or it has been holding office as auditor prior to the commencement of the Act shall be taken into account in calculating the period of five consecutive years or ten consecutive years, as the case may be.

(ii) The incoming auditor or audit firm shall not be eligible if such auditor or audit firm is associated with the outgoing auditor or audit firm under the same network of audit firms or is operating under the same trade mark or brand.

Explanation– For the purpose of rotation of auditors, break in term for a continuous period of 5 years would only be considered as fulfilling the requirement of eligibility.

(5) Where a company has appointed two or more persons as joint auditors, the company shall follow the rotation of auditors in such a manner that all of the joint auditors do not complete their term in the same year.

Removal of the auditor before expiry of his term

10.5 For the purposes of sub-section (1) of Section 140,

(i) The application to the Central Government shall be made in Form No. 10.1.

(ii) The application shall be filed within 30 days from the date on which the special resolution was passed in general meeting.

(iii) The application shall be accompanied by such fees as specified in Annexure C.

RESIGNATION OF AUDITOR

10.6. For the purposes of sub-section (2) of section 140, when an auditor has resigned from the company, he shall file a statement in Form No. 10.2.

Disqualifications of auditor

10.7 (1)For the purpose of proviso to sub-clause (i) of clause (d) of sub-section (3) of section 141, a relative of an auditor may hold securities of face value or interest in the company not exceeding rupees one lakh.

(2) For the purpose of sub-clause (ii) of clause (d) of sub-section (3) of section 141, a person who or whose relative or partner is indebted to the company or its subsidiary or its holding or associate company or a subsidiary of such holding company, in excess of rupees one lakh shall not be eligible for appointment.

(3) For the purpose of sub-clause (iii) of clause (d) of sub-section (3) of section 141, a person who or whose relative or partner has given a guarantee or provided any security in connection with the indebtedness of any third person to the company, or its subsidiary, or its holding or associate company or a subsidiary of such holding company, in excess of one lakh rupees shall not be eligible for appointment.

(4) For the purpose of clause (e) of sub-section (3) of section 141, the term "business relationship" shall construe any transaction entered into for a commercial purpose except those which are in the nature of professional services as permitted to be rendered by an auditor or audit firm under the Act and the Chartered Accountants Act and the rules and the regulations made under such Act.

10.8 For the purpose of clause (j) of sub-section (3) of section 143, the Auditor's report shall also include their views and comments on the following matters:

(a) Whether the company has disclosed the effect, if any, of pending litigations on its financial position in its financial statement;

(b) Whether the company has made provision for foreseeable losses, if any, on long term contracts including derivative contracts;

(c) Whether there has been delay in depositing money into the Investor Education and Protection Fund by the company

Duties and powers of the company's auditor with reference to the audit of the branch and the branch auditor

10.9 (1) For the purposes of sub-section (8) of section 143, the duties and powers of the company's auditor with reference to the audit of the branch and the branch auditor, if any, shall be as contained in sub-sections (1) to (4) of section 143.

(2) The branch auditor shall submit his report to the company's auditor.

(3) The provisions of sub- section (12) of section 143 read with rule 10.10 hereunder regarding reporting of fraud by auditor shall also extend to such branch auditor to the extent it relates to the concerned branch.

Reporting of Frauds by auditor

10.10 (1) For the purpose of sub-section (12) of section 143, in case the auditor has sufficient reason and information to believe that an offence involving fraud which is likely to materially affect the company, is being or has been committed against the company by officers or employees of the company, he shall report the matter to the Central Government immediately but not later than thirty days of his knowledge or information, with a copy to the audit committee or in case the company has not constituted an audit committee, to the Board.

(2) For the purpose of sub rule (1), materiality shall mean:

(a) fraud(s) that is or are happening frequently; or

(b) fraud(s) where the amount involved or likely to be involved is not less than five percent of net profit or two percent of turnover of the company for the preceding financial year.

(3) In all other cases, auditors shall send a report in writing to the audit committee and where the company has not constituted an audit committee, to the Board, and the audit committee or the Board, as the case may be, shall reply to the auditors in writing as to steps taken by the audit committee or the Board in addressing the issues of fraud, including systemic issues.

(4) In case the audit committee or the Board, as the case may be, is not taking action or the auditor is not satisfied with the action taken, he may report to the Central Government even if the fraud is not material in nature.

(5) The report shall be sent to the Secretary, Ministry of Corporate Affairs in a sealed cover by Registered Post with Acknowledgement Due or by Speed post followed by an email in confirmation of the same.

(6) The report shall be on the letter-head of the Auditor and be signed by the Auditor with his seal and shall indicate his Membership Number.

(7) The report shall be in the form of a statement as given in Form No. 10.3:

Remuneration of the Cost Auditor

10.11 For the purpose of sub-section (3) of section 148,

(1) In the case of companies which are required to constitute an audit committee-

(a) the audit committee shall take into consideration the qualifications and experience of the person appointed by the Board as

cost auditor and recommend to the Board a suitable remuneration to be paid to the cost auditor; and

(b) the remuneration recommended by the Audit Committee shall be considered and approved by the Board of Directors and ratified subsequently by the shareholders.

(2) In the case of those companies which are not required to constitute an audit committee, the Board shall consider and approve the remuneration of the Cost Auditor which shall be ratified by shareholders subsequently.

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DRAFT RULES UNDER COMPANIES ACT, 2013

CHAPTER-XI
APPOINTMENT AND QUALIFICATIONS OF DIRECTORS

Woman director on the Board.

11.1. For the purposes of second proviso to sub-section (1) of section 149 the following class of companies shall appoint at least one woman director within the period indicated against each of them, as under:-

(i) every listed company - within one year from the commencement of second proviso to sub-section (1) of section 149;

(ii) every other company having a paid–up share capital of one hundred crore rupees or more – within three years from the commencement of second proviso to sub-section (1) of section 149;

Number of independent directors.

11.2. For the purposes of sub-section (4) of section 149, the following class or classes of companies shall have at least one-third of the total number of its directors as independent directors:-

(i) Public Companies having paid up share capital of one hundred crore rupees or more; or

(ii) Public Companies which have, in aggregate, outstanding loans or borrowings or debentures or deposits, exceeding two hundred crore rupees.

Explanation: - The criteria specified under sub-rule (i) and (ii) shall be applicable for the first year and shall continue to apply to that company in subsequent years during the tenure of the Independent Director even if the paid up share capital or net worth or borrowings/deposits, as the case may be, fall below the limits specified therein.

Provided that a company belonging to any class of companies for which a higher number of independent directors has been prescribed in or under the law/regulations governing such class of companies, shall comply with the requirements specified in such law/regulation.

Qualifications of independent director.

11.3. For the purposes of clause (f) of sub-section (6) of section 149, an independent director shall possess appropriate balance of skills, experience and knowledge in one or more fields of finance, law, management, sales, marketing, administration, research, corporate governance, technical operations or other disciplines related to the company's business:

Provided that the board shall, in its report to be made under section 134, for the first time after the appointment of the independent director, furnish a statement to the effect that in its

opinion the independent director possesses appropriate balance of skills, experience and knowledge, as required.

Creation and maintenance of databank of persons offering to become independent directors.

11.4. (1) For the purposes of sub-section (1) of section 150, anybody, institute or association which has been authorized in this behalf by the Central Government shall create and maintain a data bank of persons willing and eligible to be appointed as independent director and such data bank shall be placed on the website of the Ministry of Corporate Affairs or on any other website as may be approved or notified by the Central Government.

(2) For the purposes of sub-section (3) of section 150, such data bank shall contain at the minimum, the following details in respect of each person included in the data bank to be eligible and willing to be appointed as independent director:

(a) DIN (Director Identification Number);
(b) Name and surname in full;
(c) Income-tax PAN ;
(d) Father's/ Spouse's name(if married) ;
(e) Date of Birth;
(f) Gender;
(g) Nationality;
(h) Occupation;
(i) Full Address with PIN Code (present and permanent)
(j) Phone number and Mobile No;

(k) E-mail id;

(l) Educational and professional qualifications;

(m) Details of experience / expertise;

(n) Details of any legal proceedings initiated or pending against such person;

(o) List of limited liability partnerships in which he is or was a designated partner along with the following details:

(i) Name of the LLP;

(ii) Nature of Industry; and

(iii) Duration- with dates;

(p) List of companies in which he is or was director along with the following details :

(i) Name of the company;

(ii) Nature of industry;

(iii) Nature of directorship – Executive / Non-executive / Independent / Nominee Director; and

(iv) Duration – with dates.

(3) A disclaimer shall conspicuously be displayed on the website along with the databank that a company must carry out its own due diligence before appointment of any person as an independent director and the body, institute or association as notified by the Central Government for creating and maintaining the databank or the Central Government shall not be responsible for the person chosen for appointment on its board as independent director out of such databank. Further, the Central Government or such body, institute or association shall neither be responsible for any contravention of any law committed by any company or its directors by the reason of the

fact that the person appointed by the company as an independent director was selected from the databank nor it will be a defence in any court of law.

(4) Any person who desires to get his name included in the data bank of independent directors shall make an application to the body, institute or association notified by the Central Government in Form No. 11.1.

Provided that the body, institute or association may also evolve a suitable mechanism, using public information available about appointment of independent directors by various companies, through which the names of such eligible persons are included in the data bank who are willing to act as independent directors.

(5) The body, institute or association may, at its sole discretion charge a reasonable fee from the applicant for inclusion of his name in the data bank of independent directors.

(6) Any person who has applied for inclusion of his name in the data bank of independent directors or any person whose name is appearing in the data bank of independent director, shall intimate to the body, institute or association, about any changes in his particulars within fifteen days of the occurrence of such change.

(7) Such databank posted on the website shall:

(a) be publicly accessible at the specified website;

(b) be substantially identical to the physical version of the panel or data bank;

(c) be searchable on the parameters specified in rule 11.4(2);

(d) be presented in a format or formats convenient for both printing and viewing online; and

(e) contain a link to obtain the software required to view / print the particulars free of charge.

Small shareholders' director.

11.5. For the purposes of section 151

(1) A listed company may *suo motu* or upon the notice of not less than five hundred or one-tenth of the total number of small shareholders, whichever is lower, elect a small shareholders' director from amongst the small shareholders.

(2) Such small shareholders intending to propose a person as a candidate for the post of small shareholders' director shall leave a notice of their intention with the company at least fourteen days before the meeting under their signature specifying the name, address, shares held and folio number of the person whose name is being proposed for the post of director and of the small shareholders who are proposing such person for the office of director.

(3) Such notice shall be accompanied by a statement signed by the person whose name is being proposed for the post of small shareholders' director stating -

(a) his Director Identification Number;

(b) that he is not disqualified to become a director under the Act; and

(c) his consent to act as a director of the company.

(4) Such director shall be considered as an independent director subject to his giving a declaration of his independence in accordance with sub-section (7) of section 149 of the Act.

(5) The appointment of small shareholders' director shall be subject to the provisions of section 152 except that-

(a) The director shall not be liable to retire by rotation;
(b) The director's tenure as small shareholders' director shall not exceed a period of three consecutive years; and
(c) on the expiry of the tenure, the director shall not be eligible for re-appointment.

(6) A person shall not be capable of being appointed as small shareholders' director of a company, if the person is not eligible for appointment in terms of section 164.

(7) A person appointed as small shareholders' director shall vacate the office if -

(a) the director ceases to be a small shareholder, on and from the date of cessation;

(b) the director incurs any of the disqualifications specified in section 164;

(c) the office of the director becomes vacant in pursuance of section 167;

(d) the director ceases to meet the criteria of independence as provided in sub-section (6) of section 149.

(8) No person shall hold the office of small shareholders' director in more than two companies at the same time.

Consent to act as director.

11.6. For the purposes of sub-section (5) of section 152, every person who has been appointed to hold the office of a director shall on or before the appointment furnish to the company a consent in writing to act as such in Form No. 11.2:

Provided that the company shall, within thirty days of the appointment of a director, file such consent with the Registrar in Form No. 11.8 along with the fee as provided in Annexure 'B'.

Application for allotment of Director Identification Number.

11.7. For the purposes of section 153,

(1) Every individual, who is to be appointed as director of a company shall make an application electronically in Form No. 11.3, to the Central Government for the allotment of a Director Identification Number (DIN) along with such fees as provided in Annexure 'C'.

(2) The Central Government shall provide an electronic system to facilitate submission of application for the allotment of DIN through the portal on the website of the Ministry of Corporate Affairs.

(3) (a) The applicant shall download Form No. 11.3 from the portal, fill in the required particulars sought therein and sign the form and after attaching copies of the following documents, scan and file the entire set of documents electronically:-

(i) photograph;

(ii) proof of identity;

(iii) proof of residence; and

(iv) verification by the applicant for applying for allotment of DIN in Form No. 11.4.

(b) The form to be filed electronically shall be countersigned digitally by either of the following:

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

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

(c) Form 11.3 can also be signed and submitted electronically by the applicant using his or her own Digital Signature Certificate.

Allotment of DIN.

11.8. For the purposes of section 154,

(1) On the submission of the Form No. 11.3 on the portal and payment of the requisite amount of fees through online mode-

(a) in case the Form No. 11.3 is signed by practicing professional as required in sub-clause (i) of clause (b) of sub-rule (3), the system shall, after processing, automatically generate the approved DIN; and

(b) in all other cases, the provisional DIN shall be generated by the system.

(2) Where provisional DIN has been generated, the Central Government shall process the applications received for allotment of DIN under sub-rule (2), decide on the approval or rejection thereof and communicate the same to the applicant along with the DIN allotted in case of approval by way of a letter by post or electronically or in any other mode, within a period of one month from the receipt of such application.

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

Provided that if the defect or incompleteness has not been rectified or has been rectified partially or has not been rectified to the satisfaction of the Central Government, then the Central Government shall-

(a) Either reject or treat and label such application as invalid in the electronic record and shall not take on record such invalid application and in such case, the provisional DIN shall lapse; and

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

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

(5) The Director Identification Number so allotted under these rules is valid for the life-time of the applicant and shall not be allotted to any other person.

Cancellation or Deactivation of DIN.

11.9. The Central Government or Regional Director (Northern Region), Noida or any officer authorised by the Regional Director may, upon being satisfied on verification of particulars or documentary proof attached with the application received from any person, cancel or deactivate the DIN in case -

(a) the DIN is found to be duplicated in respect of the same person;

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

(c) of the death of the concerned individual;

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

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

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

Explanation.- For the purposes of clause (b),

(i) the term "wrongful manner" means if the DIN is obtained on the strength of documents which are not legally valid.

(ii) the term "fraudulent means" means if the DIN is obtained with an intent to deceive any other person or any authority including the Central Government.

Intimation of changes in particulars specified in DIN application.

11.10. (1) Every individual who has been allotted a Director Identification Number under these rules shall, in the event of any change in his particulars as stated in Form No.11.3, intimate such change(s) to the Central Government within a period of thirty days of such change(s) in Form No. 11.5 in the following manner-

(i) the applicant shall download Form No. 11.5 from the portal and fill in the relevant changes, attach copy of the proof of the

changed particulars and verification in the Form No. 11.6 all of which shall be scanned and submitted electronically;

(ii) the form shall be digitally signed by a chartered accountant or a company secretary in practice or a cost accountant;

(iii) the applicant shall submit the Form No. 11.5 on the portal and there shall be no fee for intimating the changes in particulars in Form 11.5.

(2) The Central Government, upon being satisfied, after verification of such changed particulars from the enclosed proofs, shall incorporate the said changes and inform the applicant by way of a letter by post or electronically or in any other mode confirming the effect of such change in the electronic database maintained by the Ministry.

(3) The DIN cell of the Ministry shall also intimate the change(s) in the particulars of the director submitted to it in Form No. 11.5 to the concerned Registrar(s) under whose jurisdiction the registered office of the company(s) in which such individual is a director is situated.

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

(5) The company shall disclose the change(s) in the particulars of the concerned director in the Annual Return of the company.

Notice of candidature of a person for directorship.

11.11. For the purposes of sub-section (2) of section 160, the company shall, not less than seven days before the general meeting, inform its members of the candidature of a person for the office of a director or the intention of a member to propose such person as a candidate for that office:

(1) by serving individual notices, on the members through electronic mode to such members who have opted for electronic mode and in writing to all other members; and

(2) by placing notice of such candidature or intention on the website of the company, if any:

Provided that it shall not be necessary for the company to serve individual notices upon the members as aforesaid if the company advertises such candidature or intention, not less than seven days before the meeting at least once in a vernacular newspaper in the principal vernacular language of the district in which the registered office of the company is situated, and circulating in that district, and at least once in English language in an English newspaper circulating in that district.

Notice of resignation of director.

11.12. For the purposes of sub-section (1) of section 168, the company shall within thirty days from the date of receipt of notice of resignation from a director, intimate the Registrar in Form No. 11.8 and post the information on its website, if any.

11.13. For the purposes of proviso to sub-section (1) of section 168, where a director resigns from his office, he may within thirty days from the date of resignation, forward to the Registrar a copy of his resignation along with reasons for the resignation in Form No. 11.7 along with the fee as provided in Annexure 'B'.

Register of directors and key managerial personnel.

11.14. (1) For the purposes of sub-section (1) of section 170, every company shall keep at its registered office a register of its directors and key managerial personnel containing the following particulars:-

(a) Director Identification Number;
(b) present name and surname in full;
(c) any former name or surname in full;
(d) father's name, and spouse's name(if married) and surnames in full;
(e) date of birth;
(f) residential address (present as well as permanent);
(g) nationality (including the nationality of origin, if different);
(h) occupation;
(i) date of the board resolution in which the appointment was made;

(j) date of appointment and reappointment in the company;
(k) date of cessation of office and reasons therefor;
(l) office of director or key managerial personnel held or relinquished in any other body corporate;

(m) membership number of the Institute of Company Secretaries of India in case of Company Secretary;

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

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

Return containing the particulars of directors and the key managerial personnel.

11.15 For the purposes of sub-section (2) of section 170, a return containing the particulars of appointment of director or key managerial personnel and changes therein, shall be filed with the Registrar in

Form No. 11.8 along with such fee as may be provided in Annexure 'B' within thirty days of such appointment or change, as the case may be.

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DRAFT RULES UNDER COMPANIES ACT, 2013

CHAPTER XII

MEETINGS OF BOARD AND ITS POWERS

Meetings of Board through video conferencing or other audio visual means.

12.1. For the purposes of sub-section (2) of section 173, a company shall comply with the following requirements and procedures, in addition to the procedures required for Board meetings in person, for convening and conducting Board meetings through video conferencing or other audio visual means:

(1) Every director of the company shall attend, at least one Board meeting in a financial year of the company, in person.

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

(a) to safeguard the integrity of the meeting by ensuring sufficient security and identification procedures;

(b) to ensure the availability of proper video conferencing or other audio visual equipment/facilities for providing transmission of the communications for effective participation of the directors and other authorised participants at the Board meeting;

(c) to record the proceedings and prepare the minutes of the meeting;

(d) to store for safekeeping and marking the tape recording(s) and/or other electronic recording mechanism as part of the records of the company;

(e) to ensure that no person other than the concerned director or other authorised participants are attending or have access to the proceedings of the meeting through video conferencing mode or other audio visual means; and

(f) to ensure that participants attending the meeting through audio visual means are able to hear and/or see the other participants clearly during the course of the meeting

(3) (a) The notices of the meeting shall be sent to all the directors in accordance with the provisions of sub-section (3) of section 173 of the Act.

(b) 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.

(c) A director intending to participate through video conferencing mode or other audio visual means shall communicate his intention in writing to the Chairman and/or the company secretary of the company and shall also furnish details of how he wishes to avail the connectivity.

(d) If the director intends to participate through video conferencing mode or other audio visual means, he shall send the confirmation at least three days prior to the scheduled date of the meeting unless waived-off by the Chairperson. The company secretary shall keep the records of the request and details furnished by the director, which shall be noted and recorded in the minutes of the meeting.

(e) In the absence of any such intimation from the director, it shall be assumed that the director will attend the meeting in person.

(4) At the start of the meeting, a roll call shall be taken by the Chairperson when every director participating through video conferencing or other audio visual means shall state, for the record, the following:

(a) his name;

(b) the location from where he is participating;

(c) that he can completely and clearly see, hear and communicate with the other participants;

(d) that he has received the agenda and all the relevant material for the meeting; and

(e) that no one other than the concerned director is attending or having access to the proceedings of the meeting at the location mentioned in (b) above.

(5) (a) After the roll call, the Chairperson or Secretary shall inform the Board about the names of persons other

than the directors who are present for the said meeting at the request or with the permission of the Chairman and confirm that the quorum is present for conducting a valid meeting.

Explanation: It is clarified that 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 item/s of business under any provisions of the Act or Rules.

(b) The roll call shall also be made at the conclusion of the meeting and at the re-commencement of the meeting after every break to confirm the presence of a quorum throughout the meeting.

(6) With respect to every meeting conducted through video conferencing or other audio visual means authorised under these rules, the scheduled venue of the meeting as set forth in the notice convening the meeting shall be deemed to be the place of the said meeting and all recordings of the proceedings at the meeting shall be deemed to be made at such place. The statutory registers which are required to be placed in the Board meeting as per the provisions of the Act shall be placed at the scheduled venue of the meeting. Where such registers are required to be signed by the directors, the same shall be deemed to have been signed by the directors participating through electronic mode if they have given their consent to this effect and it is so recorded in the minutes of the meeting. .

(7) (a) Every participant shall identify himself for the record before speaking on any item of business on the agenda.

(b) If the director fails to identify himself, the Chairperson or company secretary shall briefly state the identity of the speaker. If the person speaking is not physically present and the secretary is not certain of the identity of the speaker, the Secretary must inquire to elicit a confirmation or correction.

(c) If a statement of a director in the meeting through video conferencing or other audio visual means is interrupted or garbled, the Chairperson or company secretary shall request for a repeat or reiteration by the director.

(8) If a motion is objected to and there is a need to put it to vote, the Chairperson shall call the roll and note the vote of each director who shall identify himself while casting his vote.

(9) From the commencement of the meeting until the conclusion of such meeting, no person other than the Chairperson, directors, Secretary and any other person whose presence is required pursuant to a legal provision shall be allowed access to the place where any director is attending the meeting either physically or through video conferencing or other audio visual means.

(10) (a) At the end of the meeting, the Chairperson of the meeting shall announce the summary of the decisions taken in that meeting in respect of each

item of business transacted at the meeting and the names of the directors who have assented to or dissented from those decisions. The video recording of this part of the meeting shall form part of the secretarial records and be preserved by the company.

(b) The minutes shall disclose the particulars of the directors who attended the meeting through video conferencing or other audio visual means.

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

(b) Every director who attended the meeting, whether personally or through video conferencing or other audio visual means, shall confirm or give his comments, about the accuracy of recording of the proceedings of that particular meeting in the draft minutes, within seven days after receipt of the draft minutes failing which his approval shall be presumed.

(c) Thereafter, the minutes shall be entered in the minute book as prescribed under section 118 of the Act.

Explanation- For the purposes of this rule, '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.

Matters not to be dealt with in a meeting through video conferencing or other audio visual means

12.2 For the purposes of the proviso to sub-section (2) of section 173, the following matters shall not be dealt with in any meeting held through video conferencing or other audio visual means:

(i) to approve the annual financial statements; and

(ii) to approve the Board's report.

Passing of resolution by circulation.

12.3. For the purposes of sub-section (1) of section 175, 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.

Committees of the Board.

12.4. Pursuant to the provisions of sub-section (1) of section 177 and sub-section (1) of section 178, the Board of directors of the following classes of companies shall constitute an Audit Committee and a Nomination and Remuneration Committee of the Board:

(a) every listed company;

(b) every other public company –

(i) having paid up capital of one hundred crore rupees or more; or

(ii) which have, in aggregate, outstanding loans or borrowings or debentures or deposits exceeding two hundred crore rupees.

Establishment of vigil mechanism.

12.5. (1) For the purposes of sub-section (9) of section 177, every listed company and the companies belonging to the following class or classes shall establish a vigil mechanism for their directors and employees to report genuine concerns:-

(1) Companies which accept deposits from the public; and

(2) Companies which have borrowed money from banks and public financial institutions in excess of fifty crore rupees;

(2) Companies which are required to constitute an audit committee shall operate the vigil mechanism through the audit committee. If any of the members of the audit committee are conflicted in a given case, they should recluse 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.

(3) This mechanism shall provide for adequate safeguards against victimization of employees and directors who avail of the mechanism and also provide for 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. Once established, the existence of the mechanism may be appropriately communicated within the organization.

(4) 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.

Powers of Board.

12.6. For the purposes of clause (k) of sub section (3) of section 179, the following powers of the Board of directors shall be exercised only by means of resolutions passed at meetings of the Board, namely :-

(1) to make political contributions;

(2) to fill a casual vacancy in the Board;

(3) to enter into a joint venture or technical or financial collaboration or any collaboration agreement;

(4) to commence a new business;

(5) to shift the location of a plant or factory or the registered office;

(6) to appoint or remove key managerial personnel (KMP) and senior management personnel one level below the KMP;

(7) to appoint internal auditors;

(8) to adopt common seal;

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

(10) to sell investments held by the company (other than trade investments), constituting five percent or more of the paid – up share capital and free reserves of the investee company;

(11) to accept public deposits and related matters and;

(12) to approve quarterly, half yearly and annual financial statements.

Disclosures by a director of his interest.

12.7.(1) For the purposes of sub-section (1) of section 184, every director shall disclose his concern or interest in any company or companies or bodies corporate (including shareholding interest), firms or other association of individuals, by giving a notice in writing in Form No. 12.1.

(2) It shall be the duty of the director giving notice of interest to cause it to be disclosed at the meeting held immediately after the date of the notice.

(3) All notices shall be kept at the registered office. Such notices shall be preserved for a period of eight years from the end of the financial year to which it relates and shall be kept in the custody of the secretary of the company or any other person authorized by the Board for the purpose.

Loan and investment by a company

12.8. For the purposes of sub-section (6) of section 186, no company registered under section 12 of the Securities and Exchange Board of India Act, 1992 and also covered under such class or classes of companies which may be notified by the Central Government in consultation with the Securities and Exchange Board, shall take any inter-corporate loan or deposits, in excess of the limits prescribed under the regulations applicable to such company, pursuant to which it has obtained certificate

of registration from the Securities and Exchange Board of India.

12.9. (1) For the purposes of sub-section (9) of section 186, every company giving loan or giving guarantee or providing security or making an acquisition shall, from the date of its registration, maintain a register in Form No. 12.2 and enter therein separately, the particulars of loans and guarantees given, securities provided and acquisitions made as aforesaid.

(2) Entries in the register shall be made chronologically in respect of each such transaction within seven days of making such loan or giving guarantee or providing security or making acquisition.

(3) The register shall be kept at the registered office of the company. The register shall be preserved permanently and shall be kept in the custody of the secretary of the company or any other person authorised by the Board for the purpose.

(4) Entries in the register shall be authenticated by the secretary of the company or by any other person authorized by the Board for the purpose.

12.10. For the purposes of sub-section (10) of section 186, extracts from the register maintained under sub-section (9) of section 186 may be furnished to any member of the company on payment of such fee as may be prescribed in the Articles of the company which shall not exceed ten rupees for each page.

12.11 (1) For the purpose of sub-section (12) of section 186, where the aggregate of the loans and investment so far made,

the amount for which guarantee or security so far provided to or in all other bodies corporate along with the investment, loan, guarantee or security proposed to be made or given by the Board, exceed the limits prescribed under section 186, no investment or loan shall be made or guarantee shall be given or security shall be provided unless previously authorized by a special resolution passed in a general meeting.

(2) A resolution passed at a general meeting in terms of sub-section (3) of section 186 to give guarantee may specify the total amount up to which the Board of Directors is authorised to give guarantee;

Provided, that the company shall disclose to the members in the financial statement the full particulars of the guarantee given and the purpose for which the guarantee is proposed to be utilised by the recipient of the guarantee.

Investments of company to be held in its own name.

12.12 (1) For the purposes of sub-section (3) of section 187, every company shall, from the date of its registration, maintain a register in Form No. 12.3 and enter therein, chronologically, the particulars of investments in shares or other securities beneficially held by the company but which are not held in its own name. The company shall also record the reasons for not holding the investments in its own name and the relationship or contract under which the investment is held in the name of any other person.

Further, the company shall also record whether such investments are held in a third party's name for the time being or otherwise.

(2) The register shall be maintained at the registered office of the company. The register shall be preserved permanently and shall be kept in the custody of the company secretary of the company or if there is no company secretary, any director or any other officer authorised by the Board for the purpose.

(3) Entries in the register shall be authenticated by the secretary of the company or by any other person authorized by the Board for the purpose.

Related Party Transactions.

12.13 For the purposes of sub-section (1) of section 188, a company shall enter into any contract or arrangement with a related party subject to the following conditions-

(1) The notice of the Board meeting at which the resolution is proposed to be moved shall disclose-

(a) name of the related party and nature of relationship;

(b) nature, duration of the contract and particulars of the contract or arrangement;

(c) material terms of the contract or arrangement including the value, if any;

(d) any advance paid or received for the contract or arrangement, if any; and

(e) any other information relevant or important for the Board to take a decision on the proposed transaction.

(2) Where any director is interested in any contract or arrangement with a related party, such director shall not be present at the meeting during discussions on the

subject matter of the resolution relating to such contract or arrangement.

12.14 (1) For the purposes of first proviso to sub-section (1) of section 188,

(i) a company having a paid-up share capital of rupees one crore or more shall not enter into a contract or arrangement with any related party; or

(ii) a company shall not enter into a transaction or transactions, where the transaction or transactions to be entered into

(a) individually or taken together with previous transactions during a financial year, exceeds five percent of the annual turnover or twenty percent of the net worth of the company as per the last audited financial statements of the company, whichever is higher, for contracts or arrangements as mentioned in clauses (a) to (e) of sub-section (1) of section 188; or

(b) relates to appointment to any office or place of profit in the company, its subsidiary company or associate company at a monthly remuneration exceeding one lakh rupees as mentioned in clause (f) of sub-section (1) of section 188; or

(c) is for a remuneration for underwriting the subscription of any securities or derivatives thereof of the company exceeding ten lakh rupees as mentioned in clause (g) of sub-section (1) of section 188;

except with the prior approval of the company by a special resolution.

(2) For the purposes of second proviso to sub-section (1) of section 188, in case of wholly owned subsidiary, the special resolution passed by the holding company shall be sufficient for the purpose of entering into the transactions between wholly owned subsidiary and holding company.

(3) The explanatory statement to be annexed to the notice of a general meeting convened pursuant to section 101 shall contain the following particulars:

(a) name of the related party ;

(b) name of the director or key managerial personnel who is related, if any;

(c) nature of relationship;

(d) nature, material terms, monetary value and particulars of the contract or arrangement;

(e) any other information relevant or important for the members to take a decision on the proposed resolution.

Register of contracts or arrangements in which directors are interested.

12.15. (1) For the purposes of sub-section (1) of section 189, every company shall maintain one or more registers in Form No. 12.4, and shall enter therein the particulars of-

(a) company or companies or bodies corporate, firms or other association of individuals, in which any director

has any concern or interest, as mentioned under sub-section (1) of section 184;

Provided that the particulars of the company or companies or bodies corporate in which a director himself or in association with any other director holds two percent or less of the paid-up share capital would not be required to be entered in the register.

(b) contracts or arrangements with a body corporate or firm or other entity as mentioned under sub-section (2) of section 184, in which any director is, directly or indirectly, concerned or interested; and

(c) contracts or arrangements with a related party with respect to transactions to which section 188 applies;

(2) Entries in the register shall be made in chronological order and shall be authenticated by the secretary of the company or by any other person authorized by the Board for the purpose.

(3) Such register shall be kept at the registered office of the company. The register shall be preserved permanently and shall be kept in the custody of the secretary of the company or any other person authorized by the Board for the purpose.

(4) For the purposes of sub-section (3) of section 189, the company shall provide extracts from such register to a member of the company on his request, within seven days from the date on which such request is made upon the payment of such fee as may be prescribed in the articles of the company but not exceeding ten rupees per page.

Payment to director for loss of office, etc. in connection with transfer of undertaking, property or shares

12.16. (1) For the purposes of sub-section (1) of section 191, no director of a company shall receive any payment by way of compensation in connection with any event mentioned in sub-section (1) unless the following particulars are disclosed to the members of the company and they pass a resolution at a general meeting approving the payment of such amount:-

(a) name of the concerned director
(b) amount proposed to be paid;
(c) event due to which compensation is payable;
(d) date of Board meeting recommending such payment;
(e) basis for the amount determined;
(f) reason/justification for the payment;
(g) manner of payment - whether payable in cash or otherwise and how;
(h) if payment is made other than in cash, valuation of such consideration by a registered valuer;
(i) sources of payment; and
(j) any other relevant particulars as the Board may think fit.

(2) For the purposes of sub-section (2) of section 191, any payment made by a company by way of compensation for the loss of office or as a consideration for retirement from office or in connection with such loss or retirement, to a managing director or whole time director or manager of the company shall not exceed the limit as set out under section 202.

(3) No payment shall be made to the managing director or whole time director or manager of the company by way of compensation for the loss of office or as consideration for retirement from office (other than notice pay and statutory payments in accordance with the terms of appointment of such director or manager, as applicable) or in connection with such loss or retirement if:

(a) the company is in default in repayment of public deposits or payment of interest thereon;

(b) the company is in default in redemption of debentures or payment of interest thereon;

(c) the company is in default in repayment of any liability, secured or unsecured, payable to any bank, public financial institution or any other financial institution;

(d) the company is in default in payment of any dues towards income tax, VAT, excise duty, service tax or any other tax or duty, by whatever name called, payable to the Central Government or any State Government, statutory authority or local authority (other than in cases where the company has disputed the liability to pay such dues); and

(e) there are outstanding statutory dues to the employees or workmen of the company which have not been paid by the company (other than in cases where the company has disputed the liability to pay such dues).

DRAFT RULES UNDER COMPANIES ACT, 2013

CHAPTER XIX

REVIVAL AND REHABILITATION OF SICK COMPANIES

Determination of sickness.

19.1 (1) Every application made to the Tribunal under sub-section (1) of section 253 by one or more secured creditors of a company, (hereinafter referred to as 'debtor company'), for determination whether the debtor company is a sick company, shall be made in **Form A.** The application can be made by the secured creditors collectively, wherein they can be mentioned as 'secured creditors' or a single secured creditor on behalf of others on authorization.

(2) No such application shall be made unless accompanied by the following:

(i) prescribed fees as specified in Annexure B;

(ii) copy of the initial demand notice issued by the applicant upon the debtor company and such notice should be dated at least ninety days prior to the date of making the application in the event of non-payment of debt;

(iii) proof of service of the demand notice upon the debtor company;

(iv) any acknowledgement and reply, if any, or correspondence, if any, received from the debtor company in pursuance of the demand notice;

(v) an up to-date statement of the ledger account of the respective secured creditors showing the amount receivable and the amount shown in the demand Notice;

(vi) copies of the audited financial statements of last five financial years, if available, of the debtor company;.

(vii) the authorisation issued by the respective secured creditors in favour of the creditor acting on authorization for filing the application and the original authorization issued by the secured creditor in favour of the signatory of the application; and

(viii) any other document which the applicant or applicants may consider necessary for effective determination of sickness.

(3) For the purposes of sub-section (2) of section 253, subject to provisions of sub-section (1) of section 254, where the applicant, at the time of making such application in **Form A,** makes a prayer for the stay of any proceeding for the winding up of the company or for execution, distress or the like against any property and assets of the company or for the appointment of a receiver in respect thereof and that no suit for the recovery of any money or for the enforcement of any security against the company shall lie or be proceeded with, such interim relief shall be prayed for in the application in **Form A:**

Provided that where an application for the stay of any proceeding for the winding up of the company or for execution, distress or the like against any property and assets of the company or for the appointment of a receiver in respect thereof

and that no suit for the recovery of any money or for the enforcement of any security against the company shall lie or be proceeded with, is to be made at any stage of proceedings after the filing of **Form A**, it shall be made in **Form B** and accompanied by a fee as specified in **Annexure C.**

(4) No application either under sub-section (1) or sub-section (2) of section 253 shall be made unless a notice thereof has been issued to the debtor company not less than fifteen days prior to the making of the application. Such notice shall be in **Form C.** The notice shall mention the date and place at which the applicant intends to move the application before the Tribunal.

(5) Before passing an order declaring the debtor company as a sick company, the Tribunal shall take into account reasons for default in payment of dues and position of debts owed by the debtor company to its creditors, both secured and unsecured and if satisfied that there exist sufficient reasons warranting the passing of such an order, the Tribunal may do so.

(6) No such order shall be passed without giving the debtor company an opportunity of being heard:

Provided that if the debtor company willfully abstains from participating in the proceedings before the Tribunal, summons requiring the presence of debtor company shall be directed to be published in writing on the notice board at or upon the door or gate at the entrance of the premises, where the registered office of the debtor company is situate and despite causing such notice, if the debtor company does not enter appearance,

it shall be deemed that the debtor company was duly granted adequate opportunity for being heard and the Tribunal may proceed accordingly.

(7) The order of the Tribunal declaring the debtor company as a sick company shall be in **Form D.**

(8) If the Tribunal grants stay, in pursuance of sub-sections (2) and (3) of section 253, of any proceedings for the winding up of the company or for execution, distress or the like against any property and assets of the company or for the appointment of a receiver in respect thereof, such order shall also direct the applicant or the debtor company to file a certified copy of the said order with the respective court or any other judicial forum where such proceedings have been continuing.

(9) Upon determination of the debtor company as a sick company, the applicant at its own cost shall cause the publication of a notice in **Form E** at least once in a vernacular newspaper in the principal vernacular language of the district in which the registered office of the company is situated and circulating in that district and at least once in English in an English newspaper circulating in that district within seven days from the date of the receipt of certified copy of order of the Tribunal determining the debtor company as a sick company.

(10) Every application made to the Tribunal under sub-section (4) of section 253 shall be made in **Form A.** Rules 19.1 (2) to (9) shall apply to such application *mutatis mutandis*.

Application for revival and rehabilitation.

19.2 (1) Every application made to the Tribunal under sub-section (1) of section 254 by one or more secured creditors of a sick company, or by the sick company, for determination of measures that may be adopted with respect to the revival and rehabilitation of such company shall be made in **Form F**. No such application shall be permitted to be filed by the Registry of the Tribunal unless it has been made within sixty days from the date of the order under sub-rule (7) of rule19.1.

Provided that the Tribunal may, if satisfied, for reasons to be recorded in writing, condone the delay of not exceeding thirty days in filing the application, however, if no application is received within the said period of thirty days, the Tribunal may pass an order to the effect that the company cannot be revived and the provisions of section 256 and section 258, shall apply.

(2) For the purposes of sub-section (2) of section 254, no such application shall be filed unless it is accompanied by the following:

(i) a copy of the audited financial statements, if available, of the debtor company for the financial year immediately preceding the date of the application.

(ii) the fee prescribed in Annexure B;

(iii) any other document which the applicant or applicants may consider it necessary for determination of the measures to be adopted for the revival and rehabilitation of the sick company .

(iv) a draft scheme of revival and rehabilitation in **Form No. G**.

Provided that where application is made by the sick company and it is unable to present a draft scheme, the application shall be accompanied by a declaration to that effect as per sub-section (2) of section 254 duly verified and signed by any two of its directors and duly supported by a resolution of its Board of directors.

Appointment of interim administrator.

19.3 (1) Within seven days of receipt of an application under sub-rule (2) of rule 19.2, the Tribunal shall, by an order**,** –

(i) post the matter for being heard before Tribunal on any date not later than ninety days from the date of receipt of the application;

(ii) direct that a notice be sent to the debtor company, if it is not the applicant;

(iii) appoint an interim administrator. The order appointing the interim administrator shall be in **Form H.**

(iv) direct the interim administrator to cause the publication of a notice in **Form I** at least once in a vernacular newspaper

in the principal vernacular language of the district in which the registered office of the company is situated and circulating in that district and at least once in English in an English newspaper circulating in that district within seven days from the date of receipt of the certified copy of the order of the Tribunal appointing him.

(v) direct the interim administrator to call and convene a meeting of the creditors within forty five days from the date of the order.

(vi) direct the interim administrator to ascertain and submit a report, within sixty days from the date of the order whether it is possible to adopt certain measures for the revival and rehabilitation of the sick company. The report of the interim administrator shall be in **Form J.**

(vii) give directions to the interim administrator to protect and preserve the assets of the sick company and for its proper management.

(2) Where the sick company did not submit a draft scheme of revival and rehabilitation within thirty days from the date on which meeting of creditors is held, the Tribunal may direct the interim administrator to take over the management of the sick company upon which the interim administrator shall take over the management of the sick company and such order shall further direct the interim administrator-

(i) to notify the sick company to that effect;

(ii) to cause the publication of a notice at least once in a vernacular newspaper in the principal vernacular language of

the district in which the registered office of the company is situated and circulating in that district and at least once in English in an English newspaper within seven days from the date of receipt of certified copy of the order of the Tribunal directing him to take over the management of the sick company;

(iii) a copy of the aforesaid notice shall be displayed on the notice board of the registered office on the website of the company, if any, and at such other places where the business of the company is carried out. The notice shall also be given to all the directors, bankers, income-tax authorities, Registrar of Companies having jurisdiction over the registered office of the company and all concerned with the affairs of the sick company that he has taken over the management of the sick company;

(iv) to call for such information and explanation as he may require from such persons and parties as he may deem fit;

(v) to apply to the Tribunal for meeting any exigencies.

(3) The interim administrator shall be entitled –

(i) to have an office at the registered office of the sick company;

(ii) to be entitled to access all information and inspect all books and papers, books of account, registers and records of the sick company at all places where the sick company has offices, branches, divisions, factories, godowns, and such other places where the affairs of the sick company are being or have been carried as ascertained from the records of the sick company.

(iii) to apply to the executive magistrate of the district for any protection that may be required for safeguarding himself and

his assistants and assets and properties, books and records of the sick company.

(iv) to apply to the Tribunal for such orders or directions or assistance as may be necessary.

(v) to apply for extension of time for anything to be done under these rules within a stipulated time.

(4) The Board of directors of the debtor company shall call a meeting within seven days of appointment of interim administrator to depute one or more officers of the company to provide all assistance that the interim administrator may require.

(5) The Tribunal shall determine the fee payable to the interim administrator which shall be borne by the applicant; where there are two or more applicants, by all of them in such proportion as the Tribunal may direct.

(6) The interim administrator shall be entitled to reimbursement of all costs, charges and expenses incurred by him subject to sanction by the Tribunal and shall be entitled to an advance on costs.

(7) On the application of any secured creditor or the sick company, if the Tribunal is satisfied that the conduct of the interim administrator was not fair and reasonable in the facts and circumstances obtained at that time when such question had arisen, after giving him an opportunity of being heard, it may, by order, terminate the office of the interim administrator and appoint in his place another person as the interim administrator and give such interim administrator such time as may be necessary.

Meetings of the creditors.

19.4 (1) For the purposes of section 256, the notice of meeting of creditors shall be issued to all creditors in **Form K** and not less than twenty one clear days shall be there between the date of issue of the notice and the date of the meeting.

(2) The quorum for a meeting of creditors shall be the presence in person or by proxy of creditors representing not less than fifty one percent of value of debts owed by the sick company to the creditors or creditors representing such other percentage of value of debts owned by the sick company to that creditors as may be ordered by the Tribunal and even the presence of single creditor may be sufficient to form a valid quorum.

(3) The interim administrator shall chair the meetings of the creditors.

(4) Decisions in the meeting of creditors shall be made by requisite majority of votes and value of debt owed by the sick company shall determine the number of votes of a particular creditor. The decision of the interim administrator shall be final as regards the value of debt owed to a particular creditor by the sick company. Any accidental omission to consider, include or issue notice to one or more unsecured creditors shall not invalidate any action taken by the interim administrator or as the case may be, by the creditors in good faith.

Committee of creditors.

19.5 (1) As soon as may be possible, but before the issuance of the notice calling the meeting of creditors in pursuance of clause (b) of sub-section (1) of section 256, the interim administrator shall, after determining the particulars of the classes of creditors of the sick company, for the purpose of section 257, constitute a committee of creditors with not more than seven members giving representation to each class of creditors. The committee so constituted shall recommend the measures that may be required to be adopted for revival and rehabilitation of the sick company.

(2) The interim administrator shall hold such number of meetings of committee at such intervals as he may deem fit so as to present a report to the Tribunal within sixty days from the date of the order of his appointment.

(3) The interim administrator shall chair the meetings of the committee of creditors and regulate the meetings, as he thinks fit.

(4) Any promoter, director or any key managerial personnel directed by the interim administrator under sub-section (3) of section 257 to attend any meeting of the committee of creditors and to furnish such information as may be considered necessary by the interim administrator, shall be under an obligation to attend the meeting and provide such information and explanation as may be required.

Order of Tribunal and appointment of company administrator.

19.6 (1) On the date of hearing, if the Tribunal is satisfied that the creditors representing three-fourth in value of the amount outstanding against the sick company present and voting had resolved that it is not possible to revive and rehabilitate the sick company it may after giving the sick company an opportunity of being heard, by order direct the winding up of the sick company or if such requisite majority had resolved that by adopting certain measures it is possible to revive and rehabilitate the sick company, it may, by order, appoint a company administrator directing him to prepare a scheme of revival and rehabilitation for the sick company. The order of the Tribunal shall be in **Form L** if the Tribunal orders the winding up of the sick company and in **Form M** if the Tribunal orders to appoint a company administrator**.**

(2) The order appointing the company administrator may contain such directions to the company administrator including but not limited to taking a complete inventory of all assets and liabilities of the sick company; all books of account, registers, maps, plans, records, documents of title and all other documents of whatever nature.

(3) The company administrator shall give public notice of the order of the Tribunal, appointing him to prepare the scheme of revival and rehabilitation and if applicable, the order of the Tribunal directing him to take over the assets or the management of the sick company, in **Form N** at least once in a vernacular newspaper

in the principal vernacular language of the district in which the registered office of the company is situated and circulating in that district and at least once in English in an English Newspaper within seven days from the date of receipt of certified copy of the order of the Tribunal.

(4) Within thirty days of the passing of the order appointing the company administrator, the company administrator shall file a certified copy of the order with the Registrar of Companies having jurisdiction over the registered office of the sick company.

(5) The sick company shall call a meeting of Board of Directors within seven days of appointment of the company administrator to depute officer or officers to provide all assistance that the company administrator may require.

(6) The Tribunal shall determine the fee payable to the company administrator which shall be borne by the applicant; where there are two or more applicants, by all of them in such proportion as the Tribunal may direct.

(7) The company administrator shall be entitled to reimbursement of all costs, charges and expenses incurred by him subject to sanction by the Tribunal and shall be entitled to an advance on costs.

(8) The company administrator shall have the following powers:

(i) to have an office at the registered office of the sick company;

(ii) to visit all offices, branches, divisions, factories, godowns, and such other places where the affairs of the sick company are being or have been carried out as ascertained from the records of the sick company;

(iii) to access all information and inspect all books and papers, books of account, registers and records of the sick company at all places where the sick company has offices, branches, divisions, factories, godowns, and such other places where the affairs of the sick company are being or have been carried out as ascertained from the records of the sick company;

(iv) to issue notices to any director, secretary, officer, manager, creditor, debtor and call for any information or explanation as he may need for carrying out his duties;

(v) to obtain from any authority of the Central Government or any State Government or quasi-government or court or Tribunal or any other judicial forum copy of any record, return, document, plaint, pleading, or any other paper which in his opinion may assist him in effective performance of his duties;

(vi) to appoint experts with the approval of the Tribunal for the purpose of ascertaining the measures that are necessary to be taken for the revival and rehabilitation of the sick company, cost whereof shall be paid by the applicant;

(vii) to apply to the executive magistrate of the district for any protection that may be required for safeguarding himself and his assistants and assets and properties, books and records of the sick company;

(viii) to apply for extension of time for anything to be done under these rules within a stipulated time.

Databank of interim administrators/company administrators

19.7 (1) For the purposes of sub-section (1) of section 259, a databank shall be maintained by the Central Government or any institute or agency authorized by the Central Government by an order consisting of the names of company secretaries in practice, chartered accountants in practice, cost accountants in practice and such other professionals as may be approved by the Central Government.

(2) No person shall be included in the databank aforesaid, unless he has:

(i) proven ability, integrity and standing having special knowledge or experience in matters related to revival and rehabilitation of sick companies or insolvency for at least ten years;

(ii) total receipts, from rendering of professional services, not less than fifteen lakh rupees in each of the previous three years according to the audited financial statements;

(iii) free from any professional or other mis-conduct, past and present, committed under the respective statute under which he is governed;

(iv) met the fit and proper person criteria specified by the Central Government from time to time.

Sanction of scheme.

19.8 (1) For the purposes of sub-section (2) of section 262, the company administrator shall issue a notice in **Form O** calling separate meetings of secured and unsecured creditors within sixty days of his appointment and place the scheme for their approval. The Tribunal may extend the time for approval of the scheme of

revival upto a period of not exceeding one hundred and twenty days from the date of the appointment of company administrator.

(2) Where the scheme relates to amalgamation of the sick company with any other company, such scheme shall require the approval of the shareholders of the both the companies in terms of the proviso under sub-section (2) of section 262.

(3) The notices of such meetings of creditors and shareholders shall be published at least once in a vernacular newspaper in the principal vernacular of the district in which the registered office of the company is situated and circulating in that district and at least once in an English daily within twenty one clear days prior to the date fixed for the respective meetings.

(4) Every creditor shall be entitled to be present in person or through an authorized representative and the creditor shall submit the form of authorization or power of attorney not less than forty eight hours in advance intimating that the meeting will be attended by its authorized representative. The presence of an authorized representative of a creditor shall be deemed to be the presence of the creditor in person.

(5) In a shareholder meeting of a sick company, every shareholder shall be entitled to attend and vote in person or through a proxy.

(6) Meetings of creditors or shareholders shall be called and held only during working hours between 0900 Hrs to 1800 Hrs on any day that is not a National holiday.

(7) The quorum for such meetings of creditors shall be the presence in person or by proxy of creditors representing not less than three-fourth in value of the amount outstanding against the sick company,

in case of secured creditors and one-fourth in value in case of unsecured creditors or representing such other percentage of value of debts owned by the sick company to that respective class of creditors as may be ordered by the Tribunal and even the presence of single creditor of that class may be sufficient to form a valid quorum.

(8) The quorum for a meeting of shareholders of the sick company shall be the same as provided in section 103.

(9) The company administrator shall chair the meetings of creditors and shareholders of the sick company and regulate the meeting, as he thinks fit.

(10) Decisions in such meetings of secured and unsecured creditors shall be made by requisite majority of votes and value of debt owed by the sick company shall determine the number of votes of a particular creditor. The decision of the company administrator shall be final as regards the value of debt owed to a particular creditor by the sick company. Any accidental omission to consider, include or issue notice to one or more unsecured creditors shall not invalidate any action taken by the company administrator or as the case may be, by the creditors in good faith. However in case if omissions had resulted in an outcome which would not have been the outcome had the votes (based on value of debt) been recorded correctly application by creditors can be made for reconsideration.

(11) The company administrator shall make an application in **Form P** to the Tribunal for sanctioning the scheme.

(12) No application for sanctioning the scheme shall be filed before the Tribunal unless it is accompanied by the following:

(i) the fee prescribed in Anneuxre B;

(ii) a copy of the approved scheme of revival and rehabilitation duly certified by the company administrator;

(iii) a copy of the audited financial statements of the sick company for the financial year immediately preceding the date of the application;

(iv) any other document which the company administrator may consider necessary;

(v) a copy of the minutes of the meetings of creditors and shareholders, if any, that approved the scheme of revival and rehabilitation duly certified by the company administrator.

(13) The Tribunal shall post the matter for a hearing on any date within sixty days of the date of filing of the application. The company administrator shall advertise the date and time of hearing of the application by the Tribunal and also features of the draft scheme of revival and rehabilitation (in brief) in **Form Q** at least once in a vernacular newspaper in the principal vernacular of the district in which the registered office of the company is situated and circulating in that district and at least once in English in an English Daily within fifteen days prior to the date of hearing so fixed by the Tribunal.

(14) The Tribunal may make modifications in the scheme in pursuance of sub-section (3) of section 262.

(15) If the scheme has received the approval of the requisite majority of the creditors and also of the shareholders, if applicable, in accordance with sub-section (2) of section 262, the Tribunal may sanction the scheme with modifications, if any, in pursuance of sub-section (3) of section 262 and the order sanctioning the scheme shall be in **Form R.** A copy of the scheme duly bearing the seal of approval of the Tribunal shall be enclosed to the order.

(16) Within thirty days of the passing of the order sanctioning the scheme, the sick company or other companies involved in the scheme shall file a certified copy of the order with each Registrar of Companies having jurisdiction over the registered office of the respective companies.

(17) The company administrator shall preserve all the books and records of the sick company including all the notices, memos, vouchers, attendance slips, proxy forms, letters, correspondence, payments received, payment made, particulars of bank account operated, bank statements, reconciliation statements, valuation reports, title deeds, copies of public notices issued, and all other papers unless otherwise ordered to be disposed of by the Tribunal. He will hand over the records to the company or the liquidator, as the case may be, before demitting the office.

(18) On the application of any secured creditor, the sick company or the transferee company, where the scheme of revival and rehabilitation involves amalgamation, if the Tribunal is satisfied that the conduct of the company administrator was not fair and reasonable in the facts and circumstances obtained at that time when such question had arisen, it may, by order, terminate the

office of the company administrator and appoint in his place another person and give such company administrator such time as may be necessary for meeting the objectives of the Act.

(19) Where the company administrator has not been able to perform or has become incapable of performing his duties due to his health or death or any other reason, the Tribunal may on its own or on the application of any interested party, appoint another person in his place who shall take charge of all records and properties from the previous incumbent as far as may be possible and either commence his duties *de novo* or continue from the stage before his appointment upon such terms and directions as the Tribunal may impose or enforce, from time to time.

(20) The Tribunal may, while sanctioning a scheme of revival or rehabilitation, on its own or on an application of any person interested in the scheme, including an objector who is bound by the scheme despite his objections, made prior to the sanctioning of the scheme, direct the enforcement or modification or termination of any contract or agreement or any obligation pursuant to such contract or agreement entered into by the sick company with any other person and such enforcement or modification or termination shall be specified in its order sanctioning the scheme.

(21) The Tribunal may, while sanctioning a scheme of revival or rehabilitation, on its own or on an application of any person interested in the scheme, including an objector who is bound by the scheme despite his objections, made prior to the sanctioning of the scheme, direct the company administrator to continue to be in office until effective implementation of the scheme. His

remuneration and other terms and conditions for such continuance shall be determined by the Tribunal and specified in its order sanctioning the scheme.

Implementation of the scheme

19.9 For the purposes of sub-section (4) of section 264, no such application shall be accepted unless it is made in **Form S** and is accompanied by **–**

(i) the fee prescribed in Annexure B;
(ii) a copy of the approved scheme of revival and rehabilitation duly certified by the company administrator;
(iii) a copy of the audited financial statements of the sick company for the financial year immediately preceding the date of the application;
(iv) any other document which the applicant may consider it necessary for proper adjudication of the matter;
(v) reasons for non-implementation of the sanctioned scheme or failure of the scheme;
(vi) modification as may be suggested or other relief, if any, sought from the Tribunal;

Winding up of company on report of company administrator.

19.10 For the purposes of sub-section (1) of section 265, where the scheme is not approved in the manner specified under sub-section

(2) of section 262, the company administrator shall submit a report to the Tribunal within fifteen days of the meeting concerned in **Form T.** Upon receipt of a report, after making such enquiries as it may deem fit, the Tribunal shall by order, direct the winding up of the sick company.

Rehabilitation and Insolvency Fund

19.11 (1) In pursuance of sub-section (4) of section 269, the Central Government shall appoint, including on deputation basis, a person, not below the rank of Director in the Central Government, as the Administrator to the Rehabilitation and Insolvency Fund (hereinafter referred to as 'the fund') on the following terms and conditions;

(i) the appointment of the administrator shall be notified in the Official Gazette;

(ii) the administrator shall hold office for a period of five years and the Central Government may re-appoint the same person as the administrator of the fund for a further period of not more than three years at one time;

(iii) any vacancy arising out of resignation, retirement, death of an administrator or for any other reason shall be filled by the Central Government as a fresh appointment;

(iv) the terms of the service of the Administrator shall be in accordance with the applicable rules of the Central Government or as may be approved by the Central Government;

(v) the Administrator shall be assisted by such number of officers and staff, appointed by the Central Government

either through deputation or on contract or permanently, as may be considered necessary by the Central Government in accordance with the Central Government policies, rules and regulations.

(2) The Administrator shall manage the fund and perform such other functions related to the management of the fund as may be assigned by the Central Government from time to time;

(3) The Administrator shall be responsible for the administration of the Fund established under sub-section (1) of section 269 for the purposes of carrying out the objects for which the Fund is established.

(4) For the purposes of crediting any amount as a deposit from any company under clause (b) of sub-section (2) of section 269, challan in **Form U** shall be used and payment as specified therein shall be made directly to the account styled as Rehabilitation and Insolvency Fund maintained by Central Government in designated branches of State Bank of India or any other nationalised bank and such remittance may be made from any branch of any bank through electronic payment facility.

(5) For the purpose of crediting any amount to the Fund from any other source under clause (c) of sub-section (2) of section 269, challan in **Form V** shall be used and payment as specified therein shall be made directly to the account styled as Rehabilitation and Insolvency Fund maintained by Central Government as per designated bank/branches as specified in sub-rule (4) above.

(6) For the purpose of withdrawing any amount under sub-section (3) of section 269 out of any amount already deposited by any company under clause (b) of sub-section (2) of section 269, an application in **Form AA** may be made by any person authorized

to do so by the Tribunal and no such withdrawal shall be allowed unless the company has been declared as a sick company and in respect of which an interim administrator or company administrator has been appointed or an order for winding up of the company has been made in pursuance of Chapter XIX or XX of the Act . No fee shall be payable for this application. The Tribunal shall consider such applications as expeditiously as may be possible but in any case an application shall be disposed of within twenty-one days of the making of such application.

(7) The Administrator shall ensure maintenance of separate and proper accounts and other relevant records in relation to the Fund giving therein the details of all receipts to and, expenditure and refund from, the Fund and other relevant particulars (company-wise) for proper administration of the Fund.

(8) The accounts of receipts in and payments from the fund shall be reconciled with the bank statements on monthly basis and any discrepancy shall be reported to the Central Government immediately on discovery of the discrepancy.

(9) The accounts shall be kept and maintained for a period at least eight years from the end of the financial year to which it relates.

(10) The Administrator shall cause to draw at the end of each Financial Year, a statement of total receipts from various sources indicated in sub section (2) of section 269 and total payments on expenditures as indicated in sub-section (3) of section 269.

(11) The Administrator shall have power to make investments of the Fund as and when considered necessary in the securities approved by the Central Government.

(12) The accounts of the fund shall be audited by the Comptroller and Auditor-General at such intervals as may be specified by him and such accounts as certified by the Comptroller and Auditor-General together with the audit report shall be forwarded annually to the Central Government by the Administrator and the Central Government shall place the same before the Parliament.

(13) Wherever the rules made for the purpose of appointment, functioning, and staffing of the Administrator or for maintenance of accounts and audit thereof, are silent, the relevant rules and regulations of the Central Government shall be applicable.

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DRAFT RULES UNDER COMPANIES ACT, 2013

CHAPTER-XVI

PREVENTION OF OPPRESSION AND MISMANAGEMENT

Number of members who can file an application for class action.

16.1. (a) For the purposes of sub-clause (a) of clause (i) of sub-section (3) of section 245, the number of members that may file an application for class action as provided in sub-section (1) shall be, in the case of a company having share capital, not less than one hundred members of the company or not less than ten per cent. of the total number of its members, whichever is less, or any member or members singly or jointly holding not less than ten percent of the issued share capital of the company, subject to the condition that the applicant or applicants have paid all calls and other sums due on his or their shares.

(b) For the purposes of sub-clause (ii) of sub-section (3) of section 245, the number of depositors that may file an application for class action as provided in sub-section(1) shall be not less than one hundred depositors or not less than ten per cent. of the total number of depositors, whichever is less or any depositor or depositors singly or jointly holding not less than ten percent of the total value of outstanding deposits of the company.

Publication of Notice.

16.2. (1) For the purposes of clause (a) of sub section (5) of section 245, on the admission of the class action application filed under sub-section (1) of section 245, a public notice shall be issued by the Tribunal, to all the members of the class-

(i) by publishing the same within seven days of admission of the application by the Tribunal at least once in a vernacular newspaper in the principal vernacular language of the state in which the registered office of the company is situated and circulating in that state and at least once in English in an English newspaper circulating in that State;

(ii) the Tribunal shall require the company to place the public notice on the website of such company, if any, in addition to publication of such public notice in newspaper under (i) above:

Provided that such notice shall also be placed on the website of the Tribunal, if any, on the website of Ministry of Corporate Affairs, on the website, if any, of the concerned Registrar of Companies and in respect of a listed company on the website of the concerned stock exchange(s) where the company has any of its securities listed, until the application is disposed of by the Tribunal.

(2) The date of issue of the newspaper in which such notice appears shall be taken as the date of serving the public notice to all the members of the class.

(3) The public notice shall, *inter alia*, contain the following-

(i) name of the lead applicant;

(ii) brief particulars of the grounds of application;

(iii) relief sought by such application;

(iv) statement to the effect that application has been made by the requisite number of members/depositors;

(v) statement to the effect that the application has been admitted by the Tribunal after considering the matters stated under sub-section (4) of section 245 and it is satisfied that the application may be admitted;

(vi) Informing other members or depositors that they can also join the applicant, if they so wish;

(vii) date and time of the hearing of the said application;

(viii) time within which any representation may be filed with the Tribunal on the application; and

(ix) such other particulars as the Tribunal thinks fit.

(4) The cost or expenses connected with the publication of the public notice shall be borne by the applicant and shall be defrayed by the company or any other person responsible for any oppressive act.

16.3 Application under clause (a) or clause (b) of sub-section (1) of section 241 of the Act shall not be withdrawn without the leave of the Tribunal.

16.4 (1) A copy of every such application under clause (a) or clause (b) of sub-section (1) of section 241 of the Act shall be served on the concerned company and on such person as the Tribunal directs.

(2) A copy of every application made under section 241 or 245 shall be served on the Regional Director and Registrar of Companies.

16.5 Where an order made by the Tribunal on a petition under this Chapter involves a reduction of share capital or alteration of the memorandum of association, the provisions of the Act and rules relating to such matters shall apply as the Tribunal may direct.

16.6 An application under clause (b) of subsection (1) of section 243 for leave to any of the persons mentioned therein as to be appointed or to act as the managing director or other director or manager of the company, shall state that whether notice of the intention to apply for such leave has been given to the Central Government and shall be accompanied by a copy of such notice. Notice of the date of hearing of the petition together with a copy of the petition shall be served on the Central Government not less than 14 clear days before the date fixed for the hearing.

16.7 Notice to be given to the Central Government, of applications under sections 241 and 245

The Tribunal shall give notice of every application made to it under section 241 or 245 to the Central Government and shall take into consideration the representations, if any, made to it by that Government before passing a final order under those sections.

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DRAFT RULES UNDER COMPANIES ACT, 2013

CHAPTER-XVIII

REMOVAL OF NAMES OF COMPANIES FROM THE REGISTER OF COMPANIES

Notice by the Registrar to the company for removal of name from Register of Companies.

18.1. (1) For the purposes of sub-section (1) of section 248, the Registrar shall send a notice in Form No. 18.1 to the company and all the directors thereof, by registered post with acknowledgement due or by speed post of his intention to remove the name of the company from the register of companies and requesting them to send their representations along with copies of the relevant documents, if any, within a period of thirty days from the date of issue of receipt of such notice.

(2) Following companies, are not eligible for taking action by the Registrar under these rules:-

(i) Listed companies;

(ii) Companies that have been delisted due to non-compliance of listing agreement or any other statutory laws;

(iii) Vanishing companies;

(iv) Companies where inspection or investigation is ordered and being carried out or yet to be taken up or where completed prosecutions arising out of such inspection or investigation or pending in the Court;

(v) Companies where notice under section 206 of the Act has been issued by the Registrar and reply thereto is pending or where prosecution if any, is pending with the court;

(vi) Companies against which prosecution for non-compoundable offence is pending in Court;

(vii) Companies accepted Public Deposits which are either outstanding or the company is in default in repayment of the same;

(viii) Company having secured loan.

Explanation : "Vanishing company" means a company, registered under the Companies Act and listed with Stock Exchange which, has failed to file its returns with Registrar of Companies and Stock Exchange for a consecutive period of two years, and is not maintaining its registered office at the address notified with the Registrar of Companies or Stock Exchange and none of its Directors are traceable.

Application by the company for removal of its name from the Register of Companies.

18.2. (1) For the purposes of sub-section (2) of section 248, a company may file with the Registrar, an application in Form No. 18.2 along with fee as prescribed in Annexure C for removing its name from the register of companies on all or any of the ground(s) specified in sub-section (1) of Section 248.

(2) The application in Form No. 18.2 shall be accompanied by:

(i) Indemnity bond duly Notarized by every director in Form No. 18.3; and

(ii) A statement of accounts containing assets and liabilities of the company made up to a day, not more than seven days before the date of application and certified by a chartered accountant.

(iii) An affidavit in Form 18.5 should be sworn by every director of the company before a first class Judicial Magistrate or Executive Magistrate or Oath Commissioner or Notary to the effect that –

(a) Extinguished all its liabilities;

(b) Filed up to date financial statements and annual returns;

(c) Company is not in operation or doing any business;

(d) No dues towards income tax or sales tax or central excise or banks and financial institution or public deposits or any other Central Government or State Government Departments or authorities or any local authorities;

(e) No inspection or investigation is ordered and pending;

(f) No prosecution for non-compoundable offence under the Act is pending;

(g) The company is not a listed company; and

(h) The company is not a company registered under section 8 of this Act.

(iv) No objection Certificate from sectoral Regulator as provided in sub-section (2) of section 248.

(v) In the case of vanishing companies, no objection from the Securities Exchange Board India, Ministry of Corporate Affairs and Reserve Bank of India (in the case of NBFCs).

(vi) Copy of the Special Resolution or consent of seventy five per cent number in terms of paid up share capital

Public Notice:

18.3 For the purposes of sub-section (1) or (2) of section 248, the Registrar shall cause a Public Notice to be published in Form No. 18.4.

Manner of publication of notice:

18.4. (1) For the purposes of sub-section (4) of section 248, a notice prescribed under sub-section (1) or sub-section (2) of section 248 shall be:

(i) published at least once in English language in a leading English newspaper and at least once in vernacular language in a leading vernacular newspaper having wide circulation in the State in which the registered office of the company is situated within thirty seven days of issue of notice under sub-section (1) of section 248 or receipt of completed application in Form No. 18.2 under sub-section (2) of section 248, as the case may be; and

(ii) Placed on the official website of the Ministry on a separate link established on such website in this regard.

(2) For the purposes of sub-rule(1) above, the Registrar may publish a consolidated notice in the manner specified in clause (i) of the said sub-rule, including therein the names of all the companies to whom notices are issued under sub-section(1) or sub section(2) of section 248;

(3) Every notice issued under sub-section (1) or sub-section (2) of section 248 shall be placed on the website of the company, if any.

(4) The Registrar of Companies shall, within fifteen days forthwith, intimate the concerned regulatory authorities regulating the company, if any, Income Tax authorities, Central Excise authorities and Service Tax authorities having jurisdiction over the company , the Chief Secretary of the State where the registered office of the company is situated, about the issue of such notice under sub-section (1) or sub-section (2) of section 248 by way of a Letter of Intimation along with such notice for comments/ objections, if any, within thirty days from the date of issue receipt of such Letter of Intimation.

(5) Registrar of Companies shall put names of the companies to whom Notice has been issued under sub-section (1) or sub-section (2) on the Ministry's web-site.

(i) The Registrar of Companies shall maintain and place on its website, the list of Companies to whom the notice under sub-section (1) of section 248 has been issued and from whom notice under sub-section(2) of section 248 have been received.

(ii) The Registrar of Companies shall update the list prescribed under this rule on the official website of the Ministry on a weekly basis.

18.5 (1) In the case of foreign nationals and NRIs an indemnity bond and affidavit may be notarized as per their respective country's law.

(2) The decision of the Registrar of Companies with respect of striking off the name of company shall be final.

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DRAFT RULES UNDER COMPANIES ACT, 2013

Chapter- XXII

Companies Incorporated Outside India

Documents to be delivered to the Registrar by foreign companies.

22.1 (1) For the purposes of clause (c) of sub-section (1) of section 380, the list of directors and secretary or equivalent (by whatever name called) of the foreign company shall contain the following particulars for each of the persons included in such list:

(a) present name and surname in full;

(b) any former name or names and surname or surnames in full;

(c) father or mother or spouse's name;

(d) date of birth;

(e) residential address;

(f) nationality;

(g) if the present nationality is not the nationality of origin, his nationality of origin;

(h) passport Number, date of issue and country of issue; (if a person holds more than one passport then details of all passports to be given)

(i) income-tax PAN , if applicable;

(j) occupation, if any ;

(k) whether directorship in any other Indian company (ies) - Yes / No. If yes, DIN, Name and CIN No. of the company(ies);

(l) other directorship or directorships held by him;

(m) Membership Number (for Secretary only).

(2) For the purposes of clause (h) of sub-section (1) of section 380, a foreign company shall, within thirty days of the establishment of its place of business in India, file with the Registrar Form No. 22.1 with such fee as provided in Annexure 'B' and with the documents required to be delivered for registration by a foreign company in accordance with the provisions of sub-section (1) of section 380. The application shall also be supported with an attested copy of approval from Reserve Bank of India under FEMA Regulations and also from other regulators, if any, approval is required by such Foreign Company to establish a place of business in India or a declaration from the authorized representative of such Foreign Company that no such approval is required.

Alteration in documents delivered to Registrar for registration.

(3) For the purposes of sub-section (3) of section 380, where any alteration is made or occurs in the document delivered to the Registrar for registration under sub-section (1) of section 380, the foreign company shall file with the Registrar, a return in Form No. 22.2 along with the fee as provided in Annexure 'B' containing the particulars of the alteration, within thirty days from the date on which the alteration was made or occurred.

Accounts of foreign company.

22.2 (1) For the purposes of clause (a) of sub-section (1) of section 381, every foreign company shall prepare financial statement of its Indian business operations in accordance with Schedule III or as near thereto as may be possible for each financial year including:

(i) documents required to be annexed or attached thereto in accordance with the provisions of Chapter X of the Act;

(ii) documents relating to parent foreign company , as submitted by it to the prescribed authority in the country of its incorporation under the provisions of the law in that country:

Provided that where such documents are not in English language, there shall be annexed to it a certified translation thereof in the English language:

Provided further that where under proviso to sub-section (1) of section 381, the Central Government has exempted or prescribed different documents for any foreign company or a class of foreign companies, then documents as prescribed shall be submitted.

(iii) Such other documents as may be required to be annexed or attached in accordance with sub-rule (2).

(2) Every foreign company shall, along with the financial statement required to be filed with the Registrar, annex or attach thereto the following documents:

(a) Statement of Related party transaction, which shall include:

(i) Names of the person in India which shall be deemed to be the related party within the meaning of clause 76 of section 2 of the Act or Indian Accounting Standard 18, of the foreign company or of any subsidiary or holding company of such foreign company or of any firm in which

such foreign company or its subsidiary or holding company is a partner;

(ii) nature of such relationship;

(iii) description and nature of transaction;

(iv) amount of such transaction during the year with opening ,closing, highest and lowest balance during the year and provisions made (if any) in respect of such transactions;

(v) reason of such transaction;

(vi) material effect of such transaction on both the parties;

(vii) Amount written off or written back in respect of dues from or to the related parties;

(viii) A declaration that such transactions were carried out at arms length basis;

(ix) Any other details of the transaction necessary to understand the financial impact.

(b) Statement of Repatriation of profits which shall include:

(i) Amount of profits repatriated during the year;

(ii) Recipients of the repatriation;

(iii) Form of repatriation;

(iv) Dates of repatriation;

(v) Details if repatriation made to a jurisdiction other than the residence of the beneficiary;

(vi) Mode of repatriation; and

(vii) Approval of Reserve Bank of India or any other authority, if any.

(c) Statement of transfer of funds (including dividends if any) which shall, in relation of any fund transfer between place of business of

foreign company in India and any other related party of the foreign company outside India including its holding, subsidiary and associate company, include:

(i) Date of such transfer;

(ii) Amount of fund transferred or received;

(iii) Mode of receipt or transfer of fund;

(iv) Purpose of such receipt or transfer; and

(v) Approval of Reserve Bank of India or any other authority, if any.

(3) The documents referred to in this rule shall be delivered to the Registrar within a period of six months of the close of the financial year of the foreign company to which the documents relate:

Provided that the Registrar may, for any special reason, and on application made in writing by the foreign company concerned, extend the said period by a period not exceeding three months.

Audit of accounts of foreign company.

22.3 (1) Every foreign company shall get its accounts pertaining to the Indian business operations prepared in accordance with the requirements of clause (a) of sub-section (1) of section 381 and rule 22.2, audited by a Chartered Accountant in India.

(2) The provisions of Chapter X and rules made there under, as far as applicable, shall apply mutatis mutandis to the foreign company.

List of places of business of foreign company.

22.4 For the purposes of sub-section (3) of section 381, every foreign company shall file to the Registrar, along with the balance sheet and profit and loss account, in Form No. 22.3 along with such fee as provided in Annexure 'B' a list of all the places of business established by the foreign company in India as on the date of balance sheet.

Annual Return.

22.5 For the purposes of sub-section (2) of section 384, every foreign company shall prepare and file to the Registrar annual return in Form No. 22.4 along with such fee as provided in Annexure 'B' containing the particulars as they stood on the close of the financial year.

Fee for registration of documents.

22.6 For the purposes of section 385, the fee to be paid to the Registrar for registering any document relating to a foreign company shall be such as provided in Annexure 'B'.

Certification.

22.7 For the purposes of clause (a) of section 386, a copy of any charter, statutes, memorandum and articles, or other instrument constituting or defining the constitution of a company shall be duly certified to be a true copy in the manner given below –

(1) If the Company is incorporated in a country outside the Commonwealth,

(a) the copy aforesaid shall be certified as a true copy by:

(i) an official of the Government to whose custody the original is committed; or

(ii) a Notary (Public) of such Country; or

(iii) an officer of the company.

(b) The signature or seal of the official referred to in sub-clause (i) of clause (a) or the certificate of the Notary (Public) referred to in sub-clause (ii) of clause (a) shall be authenticated by a diplomatic or consular officer empowered in this behalf under section 3 of the Diplomatic and Consular Officers (Oaths and fees) Act, 1948 (XL of 1948), or where there is no such officer, by any of the officials mentioned in section 6 of the Commissioners of Oath Act, 1889 (52 and 53 Vic. C. 10), or in any Act amending the same.

(c) The certificate of the officer of the company referred to in sub-clause (iii) of clause (a) shall be signed before a person having authority to administer an oath as provided under section 3 of the Diplomatic and Consular Officers (Oath and Fees) Act, 1948 (XL of 1948), or as the case may be, by section 3 of the Commissioners of Oath Act, 1889 (52 and 53 Vic, C. 10) the status of the person administering the oath in the latter case being authenticated by any official specified in section 6 of the Commissioners of Oaths Act, 1889 (52 and 53 Vic. C. 10) or in any Act amending the same.

(2) If the company is incorporated in any part of the Commonwealth, the copy of the document shall be certified as a true copy by:

(a) an official of the Government to whose custody the original of the document is committed; or
(b) a Notary (Public) in that part of the Commonwealth; or
(c) an officer of the company, on oath before a person having authority to administer an oath in that part of the Commonwealth.

Explanation- Any altered document delivered to the Registrar should also be duly certified in the manner above mentioned.

(3) If the Company is incorporated in a country falling outside the Commonwealth but a party to the Hague Apostille Convention, 1961-

(a) the copy of the documents shall be certified as a true copy by an official of the Government to whose custody the original is committed and be duly apostillised in accordance with Hague Convention;

(b) a list of the directors and the secretary of the Company, if any, the name and address of persons resident in India, authorized to accept notice on behalf of the Company shall be duly notarized and be apostillised in the Country of their origin in accordance with Hague Convention;

(c) the signatures and address on the Memorandum of Association and proof of identity, where required, of foreign nationals seeking to register a company in India shall be

notarized before the notary of the country of their origin and be duly apostillised in accordance with the said Hague Convention.

Authentication of translated documents.

22.8 (1) For the purposes of this chapter, all the documents required to be filed with the Registrar shall be in English language and where any such document is not in English language, there shall be attached a translation thereof in English language duly certified to be correct in the manner given in these Rules.

(2) Where any such translation is made outside India, it shall be authenticated by the signature and the seal, if any, of:

(a) the official having custody of the original; or

(b) a Notary (Public) of the country (or part of the country) where the company is incorporated:

Provided that where the company is incorporated in a country outside the Commonwealth, the signature or seal of the person so certifying shall be authenticated by a diplomatic or consular officer empowered in this behalf under section 3 of the Diplomatic and Consular Officers (Oaths and Fees) Act, 1948, or, where there is no such officer, by any of the officials mentioned in section 6, of the Commissioners of Oaths Act, 1889 (52 and 53 Vic C 10), or in any Act amending the same.

(3) Where such translation is made within India, it shall be authenticated by:

(a) an advocate, attorney or pleader entitled to appear before any High Court; or

(b) an affidavit, of a competent person having, in the opinion of the Registrar, an adequate knowledge of the language of the original and of English.

Documents to be annexed to prospectus.

22.9 For the purposes of section 389, the following documents shall be annexed to the prospectus-

(a) Any consent to the issue of the prospectus required from any person as an expert,
(b) A copy of contracts for appointment of managing director or manager;
(c) A copy of any other material contracts, not entered in the ordinary course of business, but entered within preceding two years;
(d) A copy of underwriting agreement;
(e) A copy of power of attorney, if prospectus is signed through duly authorized agent of directors.

Issue of Indian Depository Receipts (IDRs).

22.10 (1) For the purposes of section 390, no company incorporated or to be incorporated outside India, whether the company has or has not established, or will or will not establish, any place of business in India (hereinafter in this rule called 'issuing company') shall make an issue of Indian Depository Receipts (IDRs) unless such company complies with the conditions mentioned under this rule, in addition to the Securities and Exchange Board of India (Issue of Capital and

Disclosure Requirements) Regulations, 2009 and any directions issued by the Reserve Bank of India.

Explanation- For the purposes of this rule, 'Indian Depository Receipt' (hereinafter referred to as 'IDR') means any instrument in the form of a depository receipt created by a Domestic Depository in India and authorized by a company incorporated outside India making an issue of such depository receipts.

(2) The issuing company shall not issue IDRs unless-

(a) its pre-issue paid-up capital and free reserves are at least US$ 50 million and it has a minimum average market capitalization (during the last 3 years) in its parent country of at least US$ 100 million

(b) it has been continuously trading on a stock exchange in its parent or home country (the country of incorporation of such company) for at least three immediately preceding years;

(c) it has a track record of distributable profits in terms of section 123 of the Act, for at least three out of immediately preceding five years;

(d) It fulfills such other eligibility criteria as may be laid down by Securities and Exchange Board from time to time in this behalf.

(3) The issuing company shall follow the following procedure for making an issue of IDRs:

(a) The issuing company shall, where required, obtain the necessary approvals or exemptions from the appropriate authorities from the country of its incorporation under the relevant laws relating to issue of capital and/ or IDRs.

(b) Issuing company shall obtain prior written approval from Securities and Exchange Board on an application made in this behalf for issue of IDRs along with the issue size.

(c) An application under clause (b) shall be made to the Securities and Exchange Board (along with draft prospectus) at least 90 days prior to the opening date of the IDRs issue, in such form , along with such fee and furnishing such information as may be specified by Securities and Exchange Board from time to time:

Provided that the issuing company shall also file with Securities and Exchange Board, through a Merchant Banker, a due diligence report along with the application under clause (b) in the form specified by Securities and Exchange Board.

(d) Securities and Exchange Board may, within 30 days of receipt of an application under clause *(c)*, call for such further information, and explanations, as it may deem necessary, for disposal of such application and shall dispose the application within 30 days of receipt of further information or explanation:

Provided that if within 60 days from the date of submission of application or draft prospectus, Securities and Exchange Board specifies any changes to be made in the draft prospectus, the prospectus shall not be filed with the Securities and

Exchange Board or Registrar of Companies unless such changes have been incorporated therein.

(e) The Issuing company shall on approval being granted by Securities and Exchange Board to an application under clause (b), pay to Securities and Exchange Board an issue fee as may be prescribed from time to time by Securities and Exchange Board.

(f) The Issuing company shall file a prospectus, certified by two authorized signatories of the issuing company, one of whom shall be a whole-time director and other the Chief Financial Officer~~,~~ stating the particulars of the resolution of the Board by which it was approved with the SEBI and Registrar of Companies, New Delhi before such issue:

Provided that at the time of filing of said prospectus with the Registrar of Companies, New Delhi, a copy of approval granted by Securities and Exchange Board and the statement of fees paid by the Issuing Company to Securities and Exchange Board shall also be attached.

(g) The prospectus to be filed with the Securities and Exchange Board and Registrar of Companies, New Delhi shall contain the particulars as prescribed in sub-rule (9) and shall be signed by all the whole-time_directors of the issuing company, and the Chief Financial Officer.

(h) The issuing company shall appoint an overseas custodian bank, a Domestic Depository and a Merchant Banker for the purpose of issue of IDRs.

(i) The issuing company may appoint underwriters registered with Securities and Exchange Board to underwrite the issue of IDRs.

(j) The issuing company shall deliver the underlying equity shares or cause them to be delivered to an Overseas Custodian Bank and the said bank shall authorize the domestic depository to issue IDRs.

(k) The issuing company shall obtain in-principle listing permission from one or more stock exchanges having nationwide trading terminals in India.

Explanation- For the purposes of this rule,

(i) 'Domestic Depository' means custodian of securities registered with the Securities and Exchange Board and authorized by the issuing company to issue IDRs.

(ii) "Merchant Banker" means a Merchant Banker as defined in sub-regulation (cb) of regulation 2 of Securities and Exchange Board (Merchant Bankers) Regulations, 1992.

(iii) "Overseas Custodian Bank" means a banking company which is established in a country outside India and which acts as custodian for the equity shares of Issuing Company, against which IDRs are proposed to be issued by having a custodial arrangement or agreement with the Domestic Depository or by establishing a place of business in India.

(4) The Merchant Banker to the issue of IDRs shall deliver for registration the following documents or information to the Securities and Exchange Board and Registrar of Companies at New Delhi, namely:-

(a) instrument constituting or defining the constitution of the issuing company;

(b) the enactments or provisions having the force of law by or under which the incorporation of the Issuing company was effected, a copy of such provisions attested by an officer of the company be annexed;

(c) if the issuing company has established place of business in India, address of its principal office in India;

(d) if the issuing company does not establish a principal place of business in India, an address in India where the said instrument, enactments or provision or copies thereof are available for public inspection, and if these are not in English, a translation thereof certified by a key managerial personnel of the Issuing company shall be kept for public inspection;

(e) a certified copy of the certificate of incorporation of the issuing company in the country in which it is incorporated;

(f) copies of the agreements entered into between the issuing company, the overseas custodian bank, the Domestic Depository, which shall inter alia specify the rights to be passed on to the IDR holders;

(g) if any document or any portion thereof required to be filed with the Securities and Exchange Board/ Registrar

of Companies is not in English language, a translation of that document or portion thereof in English, certified by a key managerial personnel of the company to be correct and attested by an authorized officer of the Embassy or Consulate of that country in India, shall be attached to each copy of the document.

5 (a) No application form for the securities of the issuing company shall be issued unless the form is accompanied by a memorandum containing the salient features of prospectus in the specified form.

(b) An application form can be issued without the memorandum as specified in clause (a) above, if it is issued in connection with an invitation to enter into an underwriting agreement with respect to the IDRs.

(c) The prospectus for subscription of IDRs of the Issuing company which includes a statement purporting to be made by an expert shall not be circulated, issued or distributed in India or abroad unless a statement that the expert has given his written consent to the issue thereof and has not withdrawn such consent before the delivery of a copy of the prospectus to the Securities and Exchange Board and Registrar of Companies, New Delhi, appears on the prospectus.

(d) The provisions of the Act shall apply for all liabilities for mis-statements in prospectus or punishment for fraudulently inducing persons to invest money in IDRs.

(e) The person(s) responsible for issue of the prospectus shall not incur any liability by reason of any non-compliance with or contravention of any provision of this rule, if-

(i) as regards any matter not disclosed, he proves that he had no knowledge thereof; or

(ii) the contravention arose in respect of such matters which in the opinion of the Central Government and / or Securities and Exchange Board were not material.

(6) (a) A holder of IDRs may transfer the IDRs or may ask the Domestic Depository to redeem these IDRs, subject to the provisions of the Foreign Exchange Management Act, 1999 and other laws for the time being in force.

(b) In case of redemption, Domestic Depository shall request the Overseas Custodian Bank to get the corresponding underlying equity shares released in favour of the holder of IDRs for being sold directly on behalf of holder of IDRs, or being transferred in the books of Issuing company in the name of holder of IDRs and a copy of such request shall be sent to the issuing company for information.

(c) A holder of IDRs may, at any time, nominate a person to whom his IDRs shall vest in the event of his death and Form 22.9 annexed to these rules may be used for this purpose.

(7) (a) The repatriation of the proceeds of issue of IDRs shall be subject to laws for the time being in force relating to export of foreign exchange.

(b) The number of underlying equity shares offered in a financial year through IDR offerings shall not exceed 25% of the post issue number of equity shares of the company.

(c) Notwithstanding the denomination of securities of an Issuing company, the IDRs issued by it shall be denominated in Indian Rupees.

(d) The IDRs issued under this Rule shall be listed on the recognized Stock Exchange(s) in India as specified in clause (k) of sub-rule (3) and such IDRs may be purchased, possessed and freely transferred by a person resident in India as defined in section 2(v) of Foreign Exchange Management Act, 1999, subject to the provisions of the said Act:

Provided that the IDRs issued by an Issuing company may be purchased, possessed and transferred by a person other than a person resident in India if such Issuing company obtains specific approval from Reserve Bank of India in this regard or complies with any policy or guidelines that may be issued by Reserve Bank of India on the subject matter.

(e) Every issuing company shall comply with such continuous disclosure requirements as may be specified by Securities and Exchange Board in this regard.

(f) On the receipt of dividend or other corporate action on the IDRs as specified in the agreements between the Issuing company and the Domestic Depository, the Domestic Depository shall distribute them to the IDR holders in proportion to their holdings of IDRs.

(8) If an Issuing company or any other person contravenes any provision of this rule for which no punishment is provided in the Act, the Issuing company shall be punishable with the fine which may extend to twice the amount of the IDR issue and where the

contravention is a continuing one, with a further fine which may extend to five thousand rupees for every day during which the contravention continues and every officer of the company who is in default or such other person shall be punishable with the fine which may extend to one lakh rupees and where the contravention is a continuing one, with a further fine which may extend to one thousand rupees for every day, during which such contravention continues.

(9) The prospectus or letter of offer shall, inter alia, contain the following particulars-

(a) General information

(i) Name and address of the registered office of the company;

(ii) name and address of the Domestic Depository, the Overseas Custodian Bank with the address of its office in India, the Merchant Banker, the underwriter to the issue and any other intermediary which may be appointed in connection with the issue of IDRs;

(iii) names and addresses of Stock Exchanges where applications are made or proposed to be made for listing of the IDRs;

(iv) provisions relating to punishment for fictitious applications;

(v) statement/declaration for refund of excess subscription;

(vi) declaration about issue of allotment letters/certificates/ IDRs within the stipulated period;

(vii) date of opening of issue;

(viii) date of closing of issue;

(ix) date of earliest closing of the issue;

(x) declaration by the Merchant Banker with regard to adequacy of resources of underwriters to discharge their respective obligations, in case of being required to do so;

(xi) a statement by the Issuing company that all moneys received out of issue of IDRs shall be transferred to a separate domestic bank account, name and address of the bank and the nature and number of the account to which the amount shall be credited;

(xii) the details of proposed utilization of the proceeds of the IDR issue.

(b) Capital Structure of the Company- Authorized, issued, subscribed and paid-up capital of the issuing company.

(c) Terms of the issue

(i) rights of the IDR holders against the underlying securities;

(ii) details of availability of prospectus and forms, i.e., date, time, place etc;

(iii) amount and mode of payment seeking issue of IDRs; and

(iv) any special tax benefits for the Issuing company and holders of IDRs in India.

(d) Particulars of Issue

(i) objects of the issue;

(ii) cost of the Project, if any; and

(iii) means of financing the projects, if any including contribution by promoters.

(e) Company, Management and Project

(i) Main objects, history and present business of the company;

(ii) Promoters or parent group or owner group and their background:

Provided that in case there are no identifiable promoters, the names, addresses and other particulars as may be specified by Securities and Exchange Board of all the persons who hold 5% or more equity share capital of the company shall be disclosed;

(iii) subsidiaries of the company, if any;

(iv) particulars of the Management / Board (i.e. Name and complete address(es) of Directors, Manager, Managing Director or other principal officers of the company);

(v) location of the project, if any;

(vi) details of plant and machinery, infrastructure facilities, technology etc., where applicable;

(vii) schedule of implementation of project and progress made so far, if applicable;

(viii) nature of product(s), consumer(s), industrial users;

(ix) particulars of legal, financial and other defaults, if any;

(x) risk factors to the issue as perceived; and

(xi) consent of Merchant Bankers, Overseas Custodian Bank, the Domestic Depository and all other intermediaries associated with the issue of IDRs.

(xii) the information, as may be specified by Securities and Exchange Board, in respect of listing, trading record or history of the Issuing company on all the stock exchanges, whether situated in its parent country or elsewhere.

(f) Report

(i) Where the law of a country, in which the Issuing company is incorporated, requires annual statutory audit of the accounts of the Issuing company, a report by the statutory auditor of the Issuing company, in such form as may be prescribed by Securities and Exchange Board on -

(A) the audited financial statements of the Issuing company in respect of three financial years immediately preceding the date of prospectus,

(B) the interim audited financial statements in respect of the period ending on a date which is less than 180 days prior to the date of opening of the issue, if the gap between the ending date of the latest audited financial statements disclosed under clause (A) and the date of the opening of the issue is more than 180 days:

Provided that if the gap between such date of latest audited financial statements and the date of opening of issue is 180 days or less, the requirement under clause (B) shall be deemed to be complied with, if a statement, as may be specified by Securities and Exchange Board, in respect of material changes in the financial position of Issuing company for such gap is disclosed in the Prospectus:

Provided further that in case of an Issuing company which is a foreign bank incorporated outside India and which is regulated by a member of the Bank for International Settlements or a

member of the International Organization of Securities Commissions which is a signatory to a Multilateral Memorandum of Understanding, the requirement under this paragraph, in respect of period beginning with last date of period for which the latest audited financial statements are made and the date of opening of the issue shall be satisfied, if the relevant financial statements are based on limited review report of such statutory auditor.

(ii) Where the law of the country, in which the Issuing company is incorporated, does not require annual statutory audit of the accounts of the Issuing company, a report, in such form as may be specified by Securities And Exchange Board, certified by a Chartered Accountant in practice within the terms and meaning of the Chartered Accountants Act, 1949 on -

(A) the financial statements of the Issuing company, in particular on the profits and losses for each of the three financial years immediately preceding the date of prospectus and upon the assets and liabilities of the Issuing company and

(B) the interim financial statements in respect of the period ending on a date which is less than 180 days prior to the date of opening of the issue have to be included in report, if the gap between the ending date of the latest financial statements disclosed under clause (A) and the date of the opening of the issue is more than 180 days:

Provided that if the gap between such date of latest audited financial statements and the date of opening of issue is 180 days or less, the requirement under clause (B) shall be deemed to be complied with if a statement, as may be specified by Securities And Exchange Board, in

respect of changes in the financial position of Issuing company for such gap is disclosed in the Prospectus.

(iii) In case of both sub-paragraphs (i) and (ii) of this paragraph, the gap between date of opening of issue and date of reports under the said subparagraphs shall not exceed 120 days.

(iv) If the proceeds of the IDR issue are used for investing in other body(ies) corporate, then following details of such body(ies) corporate shall be given :

(A) Name and address(es) of the bodies corporate;

(B) The reports stated in sub-paragraphs (i) and (ii), as the case may be, in respect of such body (ies) corporate also."

(g) Other Information

(i) Minimum subscription for the issue.

(ii) Fees and expenses payable to the intermediaries involved in the issue of IDRs;

(iii) Declaration with regard to compliance with Foreign Exchange Management Act, 1999.

(h) Inspection of Documents

Place at which inspection of the offer documents, the financial statements and auditor's report thereof will be allowed during the normal business hours.

(i) Any other information as specified by Securities And Exchange Board or Income Tax Authorities or Reserve Bank of India or other regulatory authorities from time to time.

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DRAFT RULES UNDER COMPANIES ACT, 2013

CHAPTER XXIV

REGISTRATION OFFICES AND FEES

Registration offices.

24.1 (1) In pursuance of sub-section (1) of section 396, the Central Government shall establish such number of offices at such places as it thinks fit, specifying their jurisdiction for the purpose of exercising such powers and discharge of such functions as are conferred on the Central Government by or under this Act or under the rules made thereunder and for the purposes of registration of companies under this Act.

(2) The office of the Registrar shall observe such normal working hours as may be approved by the Central Government and shall be open for the transaction of business with the public on all days except Saturday, Sunday and public holidays during working hours between 10.30 a.m. and 3.30 p.m.

(3) The offices other than the office of the Registrar shall observe such normal working hours as may be approved by the Central Government.

Powers and duties of Registrars

24.2. (1) For the purposes of sub-section (2) of section 396, the Registrars shall exercise such powers and discharge such duties as are conferred on them by the Act or rules made thereunder or delegated to them by the Central Government, wherever the

power or duty has been conferred upon the Central Government by the Act or rules made there under.

(2) The Registrar so appointed shall -

(a) exercise the powers and perform the duties assigned to the Registrar by the Act or rules made thereunder;

(b) subject to the directions of the Central Government, be responsible for the administration of the Companies Registration Office; and

(c) exercise any power and perform any duty assigned to him by the Central Government.

(3) Whenever according to the Act, any function or duty is to be discharged by the Registrar, it shall, until the Central Government otherwise directs, be done by the existing Registrar , or in his absence, by such person as the Central Government may for the time being authorize:

Provided that in the event of the Central Government altering the constitution of the existing registry offices or any of them, any such function or duty shall be discharged by such officer and at such place, with reference to the local situation of the registered offices of the companies concerned, as the Central Government may appoint.

Terms and conditions of service.

24.3. For the purposes of sub-section (3) of section 396, the terms and conditions including the salaries payable to persons appointed under this section shall be fixed by the Central Government.

Seal of Registrar.

24.4 For the purposes of sub-section (4) of section 396, the Registrar shall have a seal and such seal shall bear the words "Registrar of Companies, _____(Place and State)".

Manner and conditions of filing.

24.5. For the purposes of clause (a) and (b) of sub-section (1) of section 398, every application, financial statement, prospectus, return, declaration, memorandum, articles, particulars of charges, or any other particulars or document or any notice, or any communication or intimation required to be filed or delivered or served under the Act and rules made there under, shall be filed or delivered or served in computer readable electronic form, in portable document format (pdf) or in such other format as has been specified in any rule or form in respect of such application or form or document or declaration to the Registrar through the portal maintained by the Ministry of Corporate Affairs on its web-site www.mca.gov.in or through any other website notified by the Central Government:

Provided that where the documents are required to be filed on Non-Judicial Stamp Paper, the company shall submit such

documents in the physical form, in addition to their submission in electronic form, unless the Central Government, by an order, does not require submission in physical form. Proof of delivery of documents submitted in physical form shall be scanned and form part of attachment to the eform.

Provided further that if stamp duty on such documents is paid electronically through Ministry of Corporate Affairs portal www.mca.gov.in or through any other website notified by the Central Government, then, the company shall not be required to make physical submission of such documents, in addition to their submission in the electronic form:

Provided also that in respect of certain documents filed under the Act which are not covered for payment of stamp duty through Ministry of Corporate Affairs portal, and stamp duty payable on such documents in respective State is equal to or less than one hundred rupees, the company shall scan such stamped documents complete in all respects and shall file electronically for evidencing by the Registrar and shall not be required to submit such documents, except those which are required to be filed for compounding of offences under section 441 in the physical form separately:

Provided also that unless otherwise stated in any law for the time being in force, the company shall retain such documents duly stamped in original for a minimum period of five years from the date of filing of such documents and shall be

required to produce the same as and when the same is required for inspection and verification by the competent authority under any law for the time being in force.

Authentication of documents

24.6. (1) For the purposes of clause (a) and clause (b) of sub-section (1) of section 398 **-**

(a) an electronic form shall be authenticated by authorized signatories using digital signature; and

(b) the authorized signatory shall be responsible for the correctness of the enclosures attached with the electronic form.

(c) Every person authorized for authentication of e-forms, documents or applications etc., which are required to be filed or delivered under the Act or rules made there under, shall obtain a digital signature certificate from the Certifying Authority for the purpose of such authentication and such certificate shall not be valid unless it is of class II or Class III specification under the Information Technology Act, 2000.

(2) The Central Government shall set up and maintain for filing of e-Forms, documents and applications, etc., and for viewing and inspection of documents in the electronic registry or for obtaining certified copies thereof: –

(a) a website or portal to provide access to the electronic registry; and

(b) as many Registrar's Front Offices as may be necessary and at such places and for such time as the Central Government may determine.

Issue of documents, certificates, notices etc. by the Registrar Maintaining documents electronically.

24.7. (1) For the purposes of clause (c) of sub-section (1) of section 398, the Central Government shall set up and maintain a secure electronic registry in which all the applications, financial statement, prospectus, return, register, memorandum, articles, particulars of charges, or any particulars or returns or any other documents filed electronically shall be stored.

(2) Every document or certificate or notice etc., required to be registered and/or authenticated by the Registrar or an officer of the Central Government under the Act or rules made there under, shall be registered and/or authenticated through a valid digital signature of such person or a system generated digital signature.

24.8 For the purposes of clause (f) of sub-section (1) of section 398, the Registrar shall issue document, certificate, notice, receipt, approval or communicate endorsement or acknowledgement in the electronic mode:

Provided that where the Registrar is not able to issue any certificate, receipt, endorsement, acknowledgement or approval in electronic mode for the reasons to be recorded in writing, he may issue such certificate or receipt or endorsement, acknowledgement or approval in the physical form under manual signature affixing seal of his office.

24.9. The Registrar may send any document, certificate, notice or any other communication either to the company or its authorized representative, directors or both in the electronic manner for which the company shall create and maintain at all times a valid electronic address (e.g. E-mail, user Identification etc.) capable of receiving and acknowledging the receipt of such document, certificate, notice or other communication, automated or otherwise.

Procedure on receipt of any application or form or document electronically.

24.10. (1) The Registrar shall examine or cause to be examined every application or e-Form or document required or authorized to be filed or delivered under the Act and rules made there under for approval, registration, taking on record or rectification by the Registrar as the case may be:

Provided that save as otherwise provided in the Act, the Registrar shall not keep any document pending for approval and registration or for taking on record or for rejection or otherwise for more than fifteen days, from the date of its filing excluding the cases in which an approval of the Central

Government or the Regional Director or the Tribunal or any other competent authority is required:

Provided further that the e-Forms or documents identified as informatory in nature and filed under Straight Through Process (STP) may be examined by the Registrar within a period of not exceeding one year after its filing:

Provided also that nothing contained in the first proviso shall affect the powers of the Registrar to call information and explanation in pursuance of section 206.

(2) Where the Registrar, on examining any application or e-Form or document referred to in sub-rule (1), finds it necessary to call for further information or finds such application or e-Form or document to be defective or incomplete in any respect, he shall give intimation of such information called for or defects or incompleteness, by placing it on the website and also by e-mail on the last intimated e-mail address of the person or the company, which has filed such application or e-Form or document, directing him or it to furnish such information or to rectify such defects or incompleteness or to re-submit such application or e-Form or document within the period allowed under sub-rule (3):

Provided that in case the e-mail address of the person or the company in question is not available, such intimation shall be given by the Registrar by post at the last intimated registered office address of the company or the last intimated address of such person, as the case may be. The Registrar

shall preserve the facts of such intimation in the electronic record.

(3) Except as otherwise provided in the Act, the Registrar shall give an opportunity allowing fifteen days time to such person or company which has filed such application or e-Form or document under sub-rule (1) for furnishing further information or for rectification of the defects or incompleteness or for re-submission of such application or e-Form or document.

(4) In case where such further information called for has not been provided or has been furnished partially or defects or incompleteness has not been rectified or has been rectified partially or has not been rectified as required within the period allowed under sub-rule (3), the Registrar shall either reject or treat and label such application or e-Form or document, as the case may be, as "invalid" in the electronic record, and shall not take on record such invalid application or e-Form or document and shall inform such person or company, as the case may be, accordingly in the manner as specified in sub-rule (2).

(5) Where any document has been recorded as invalid by the Registrar, such document may be rectified by the company only through fresh filing along with payment of fee and additional fee, as applicable, without prejudice to any other liability under the Act.

(6) In case the Registrar finds any e-Form or document filed under Straight Through Process (STP), referred to in proviso under sub-rule (1), as defective or incomplete in any respect, at any time within a period of not exceeding one year after its filing, he shall treat and label such e-Form or document as "defective" in the electronic registry and shall also issue a notice pointing out such defects or incompleteness in such e-Form or document at the last intimated e-mail address of the person or the company which has filed the document, calling upon such person or company to file such e-Form or document afresh along with fee and additional fee, as applicable, after rectifying such defects or incompleteness within a period of thirty days from the date of such notice:

Provided that in case the e-mail address of the person or the company in question is not available, such intimation shall be given by the Registrar by post at the last intimated registered office address of the company or the last intimated address of such person, as the case may be. The Registrar shall preserve the facts of such intimation in the electronic record.

Fees.

24.11. For the purposes of sub-section (1) of section 403, any document, required to be submitted, filed, registered or recorded or any fact or information required or authorized to be registered under the Act shall be submitted, filed, registered or recorded on payment of such fee or on payment of such additional fee as mentioned in Annexure 'B'.

24.12. For the purposes of clause (e) of sub-section (1) of section 398, the fees, charges or other sums payable for filing any application, form, return or any other document in pursuance of the Act or any rule made or notification issued there under shall be paid into the Public Account of India by means of (i) Credit Card; or (ii) Internet Banking; or (iii) Remittance at the counter of the authorized banks; or (iv) any other mode as approved by the Central Government.

Inspection, production and evidence of documents kept by Registrar.

24.13 For the purposes of clause (d) of sub-section (1) of section 398, the inspection of the documents maintained in the electronic registry so set up in pursuance of Rule 24.8 and which are otherwise available for inspection under the Act or rules made thereunder, shall be made by any person in electronic form.

24.14. For the purposes of sub-section (1) of section 399, any person may –

(a) inspect any document kept by the Registrar, being documents filed or registered by him in pursuance of this Act or any previous Company Law or making a record of any fact required or authorized to be recorded or registered in pursuance of this Act, on payment for each inspection of fee as provided in Annexure 'A'.

(b) require a certificate of incorporation of any company, or a copy or extract of any other document or any part of any

other document to be certified by the Registrar, on payment of fee as provided in Annexure 'A'.

DRAFT RULES UNDER THE COMPANIES ACT, 2013

CHAPTER -XXIX

MISCELLANEOUS

Adjudication of penalties.

29.1 (1) For the purposes of sub-section (1) of section 454, the Central Government may, by an order published in the Official Gazette, appoint any of its officers, not below the rank of Registrar, as adjudicating officers for adjudging penalty under the provisions of the Act.

(2) Before adjudging penalty, the adjudicating officer shall issue a written notice to the company and every other person alleged to have made the non compliance or default in question, to show cause, within such period as may be specified in the notice (not being less than fourteen days from the date of service thereon), why the inquiry should not be held against him.

Provided that every notice issued under this clause, shall clearly indicate the nature of non compliance or default alleged to have been committed or made by such company and/or person, as the case may be.

Provided further that the adjudicating officer may, for reasons to be recorded in writing, extend the period referred to above by a further period not exceeding fourteen days if the company or person (as applicable) satisfies the said officer that it has sufficient cause for not responding to the notice within the stipulated period.

(3) If, after considering the cause, if any, shown by such company and/or person, the adjudicating officer is of the opinion that an inquiry should be held, he shall issue a notice fixing a date for the appearance of such company and/or person whether personally or through his authorised representative.

(4) On the date fixed for hearing, after giving a reasonable opportunity of being heard to the person(s) concerned, the adjudicating officer may, subject to reasons to be recorded in writing, pass any order as he thinks fit including an order for adjournment of the hearing to a future date.

(5) Every order passed under sub-rule (4) shall be dated and signed by the adjudicating officer.

(6) The Adjudicating Officer shall send a copy of the order passed by it to the concerned company and/ or officer who is in default and the Central Government.

(7) While holding an inquiry, the adjudicating officer shall have the following powers:

(a) to summon and enforce the attendance of any person acquainted with the facts and circumstances of the case;

(b) to order for evidence or to produce any document, which in the opinion of the adjudicating officer, may be useful for or relevant to the subject matter of the inquiry.

(8) While adjudging quantum of penalty, the adjudicating officer shall have due regard to the following factors, namely:

(a) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;

(b) the amount of loss caused to an investor or group of investors or creditors as a result of the default;

(c) the repetitive nature of the default.

(9) All sums realised by way of penalties under the Act shall be credited to the Consolidated Fund of India.

(10) The provisions of the Code of Civil Procedure, 1908, Indian Evidence Act, 1872 and the Code of Criminal Procedure, 1973 shall not be applicable to such adjudication proceedings.

Appeal against the order of adjudicating officer.

29.2. (1) For the purposes of sub-section (6) of section 454, every appeal against the order of the adjudicating officer passed under sub-section (3) of section 454 shall be filed in writing with the Regional Director having jurisdiction in the matter within sixty days from the date of receipt of the order of adjudicating officer by the aggrieved party, in Form No. 29.1 setting forth the grounds of appeal and shall be accompanied by a certified copy of the order against which the appeal is sought:

Provided that where the party is represented by an authorised representative, a copy of such authorisation in favour of the representative and the written consent thereto by such authorised representative shall also be appended to the appeal:

Provided further that an appeal in Form No. 29.1 shall not seek relief(s) therein against more than one order unless the reliefs prayed for are consequential.

(2) Every appeal filed under this rule shall be accompanied by such fee as provided in Annexure C.

29.3. (1) On the receipt of an appeal, office of the Regional Director shall endorse the date on such appeal and shall sign such endorsement.

(2) If, on scrutiny, the appeal is found to be in order, it shall be duly registered and given a serial number:

Provided that where the appeal is found to be defective, the Regional Director may allow the appellant such time, not being less than fourteen days following the date of receipt of intimation by the appellant from the Regional Director about the nature of the defects, to rectify the defects and if the appellant fails to rectify such defects within the time period allowed as above, the Regional Director may by order and for reasons to be recorded in writing, decline to register such appeal and communicate such refusal to the appellant within seven days thereof.

Provided further that the Regional Director may, for reasons to be recorded in writing, extend the period referred to in the first proviso above by a further period of fourteen days if an appellant satisfies the Regional Director that the appellant had sufficient cause for not rectifying the defects within the period of fourteen days referred in the first proviso above.

29.4. (1) On the admission of the appeal, the Regional Director shall serve a copy of appeal upon the adjudicating officer against whose order the appeal is sought along-with a notice requiring such adjudicating officer to file his reply thereto within such period, not exceeding twenty-

one days, as may be stipulated by the Regional Director in the said notice.

Provided that the Regional Director may, for reasons to be recorded in writing, extend the period referred to in sub-rule (1) above for a further period of twenty-one days, if the adjudicating officer satisfies the Regional Director that he had sufficient cause for not being able to file his reply to the appeal within the above-said period of twenty-one days.

(2) On the receipt of any reply, application or written representation filed by the adjudicating officer, the Regional Director shall forthwith serve the same on the appellant along-with a notice requiring the appellant and the relevant adjudicating officer to appear before the Regional Director on a date to be specified in such notice (which date shall not be a date earlier than thirty days following the date of issuance of such notice) for hearing of the appeal.

(3) On the date fixed for hearing, after giving a reasonable opportunity of being heard to the persons concerned, the Regional Director may, subject to reasons to be recorded in writing, pass any order as he thinks fit including an order for adjournment of the hearing to a future date.

(4) In case the appellant or the adjudicating officer does not appear on the date fixed for hearing, the Regional Director may dispose of the appeal *ex-parte:*

Provided that where the appellant appears afterwards and satisfies the Regional Director that there was sufficient cause for his non-appearance, the Regional Director may make an order setting aside the *ex-parte* order and restore the appeal.

(5) Every order passed under this rule shall be dated and signed by the Regional Director.

(6) A certified copy of every order passed by the Regional Director shall be communicated to the adjudicating officer and to the appellant forthwith and to the Central Government.

Application for obtaining status of dormant company.

29.5. For the purposes of sub-section (1) of section 455, a company may make an application in Form No. 29.2 along with such fee as provided in Annexure 'B' to the Registrar for obtaining the status of a Dormant Company in accordance with the provisions of section 455 after passing a special resolution to this effect in the general meeting of the company.

Certificate of status of dormant company.

29.6 For the purposes of sub section (2) of section 455, the Registrar shall, after considering the application filed in Form No. 29.2, issue a certificate in Form No. 29.3 allowing the status of a Dormant Company to the applicant.

Register of dormant companies.

29.7. For the purposes of sub-section (3) of section 455, the Register maintained under the portal maintained by the Ministry of Corporate Affairs on its web-site www.mca.gov.in or any other website notified by the Central Government, shall be the register for dormant companies.

Minimum number of directors for dormant company.

29.8. For the purposes of sub-section (5) of section 455, a dormant company shall have a minimum number of three directors in case of a public company, two directors in case of a private company and one director in case of a One Person Company:

Provided that the provisions of the Act in relation to the rotation of directors shall not apply on dormant companies.

Return of dormant companies.

29.9. For the purposes of sub-section (5) of section 455, a dormant company shall file a declaration annually in Form No. 29.4 along with such annual fee as provided in Annexure 'B' within thirty days from the end of each financial year.

Provided that the company shall continue to file the return(s) of allotment in the manner and within the time specified in the Act whenever the company allots any security to any person.

29.10.(1) Application under sub-section (5) of section 455 for obtaining the status of an active company shall be made in Form No. 29.5 along with such fee as may be provided in Annexure 'B' and shall be accompanied by a return in Form No. 29.4 in respect of the financial year in which the application for obtaining the status of an active company is being filed.

Provided that the Registrar shall initiate the process of striking off of the name of the company if the company remains as a dormant company for a period of consecutive five years.

(2) Where a dormant company does or omits to do any act mentioned in the Grounds of application in Form no. 29.2 submitted to ROC for obtaining the status of dormant company, affecting its status of dormant company, the directors shall within seven days from such event, file an application, under sub rule (1) of this rule, for obtaining the status of an active company.

(3) If it comes to the knowledge of the Registrar that any company registered as 'dormant company' under his jurisdiction has been functioning in any manner, directly or indirectly, he may initiate the proceedings for enquiry under section 206 of the Act and if, after giving a reasonable opportunity of being heard to the company in this regard, it is found that the company has actually been functioning, the Registrar may

(i) remove the name of such company from register of dormant companies and treat it as an active company; or

(ii) take action under chapter XVIII of the Act

Fees for application to Central Government or Tribunal.

29.11. For the purposes of sub-section (2) of section 459, every application which may be, or is required to be, made to the Central Government or the Tribunal under any provision of the Act-

(a) in respect of any approval, sanction, consent, confirmation or recognition to be accorded by that Government or the Tribunal to, or in relation to, any matter; or

(b) in respect of any direction or exemption to be given or granted by that Government or the Tribunal in relation to any matter; or

(c) in respect of any other matter,

shall be accompanied by such fee as provided in Annexure 'C'.

Association or partnership of persons exceeding certain number.

29.12. For the purposes of sub-section (1) of section 464, no association or partnership shall be formed, consisting of more than fifty persons for the purpose of carrying on any business that has for its objects the acquisition of gain by the association or partnership or by individual members thereof, unless it is registered as a company under the Act or is formed under any other law for the time being in force.

Dissolution of Company Law Board and consequential provisions.

29.13. For the purposes of fifth proviso to sub section (1) of section 466, the monies in the provident fund, superannuation fund, welfare fund or other fund established by the Company Law Board and relatable to the officers and other employees who have become the officers or employees of the Tribunal or Appellate Tribunal shall be transferred to, and vest in, the Tribunal or Appellate Tribunal, as the case may be, and the same shall be utilised by the Tribunal or Appellate Tribunal for settling the claims of such officers or employees or their nominees as per the provisions of the Employees Provident Fund and Miscellaneous Provisions Act, 1952 or the Superannuation fund or welfare fund or any other fund Scheme.

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DRAFT RULES UNDER COMPANIES ACT, 2013

CHAPTER XXVI

Nidhis

In exercise of the powers conferred under sub-section (1) of section 406 read with sub-sections (1) and (2) of 469 of the Companies Act, 2013, the Central Government hereby makes the following rules, namely:-

1. These Rules may be called Nidhi Rules, 2013.

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

3. These rules shall apply to:

(a) Every company which had been declared as a Nidhi or Mutual Benefit Society under sub-section (1) of section 620A of the Companies Act, 1956.

(b) Every company functioning on the lines of a Nidhi company or Mutual Benefit Society but has either not applied for or has applied for and is awaiting notification to be a Nidhi or Mutual Benefit Society under sub-section (1) of section 620A of the Companies Act, 1956.

(c) Every company incorporated as a Nidhi pursuant to the provisions of section 406 of the Act (hereinafter referred to as Nidhi).

4. In these rules:-

(i) "Act" means the Companies Act, 2013.

(ii) "Doubtful Asset" means a borrowal account which has remained a non-performing asset for more than two years but less than three years.

(iii) "financial year" means financial year as defined in sub-section (41) of section 2 of the Act.

(iv) "Loss Asset" means a borrowal account which has remained a non-performing asset for more than three years or where in the opinion of the Board, a shortfall in the recovery of the loan account is expected because the documents executed may become invalid if subjected to legal process or for any other reason.

(v) "Member" means a member as defined in sub-section (55) of section 2 of the Act.

(vi) "Net Owned Funds" means the aggregate of paid up equity capital and free reserves as reduced by accumulated losses and intangible assets appearing in the last audited balance sheet:

Provided that:

(a) A reserve shall be considered as a "free reserve" if it is available for distribution as dividend.

(b) The amount representing the proceeds of issue of preference shares shall not be included for calculating Net Owned Funds.

(vii) "Non-Performing Asset" means a borrowal account in respect of which interest income and/or instalment of loan towards repayment of principal amount has remained unrealised for 12 months.

(viii) "Standard Asset" means the asset in respect of which no default in repayment of principal or payment of interest has occurred or is perceived and which has not shown signs of any problem relating to repayment of principal sum or interest nor does it carry more than normal risk attached to the business.

(ix) "Sub-Standard Asset" means a borrowal account which is a non performing asset:

Provided that reschedulement or renegotiation or rephasement of the loan instalment or interest payment would not change the classification of an asset unless the borrowal account has satisfactorily performed for at least twelve months after such reschedulement or renegotiation or rephasement.

5. Incorporation and incidental matters

(i) For the purposes of sub-section (71) of section 2 of the Act, a Nidhi to be incorporated under the Act shall be a public company and must have a minimum paid up equity share capital of ten lakh rupees.

(ii) On and after the commencement of the Act, no Nidhi shall issue preference shares. If preference shares had been issued by a Nidhi before the commencement of this Act, such preference shares shall be redeemed in accordance with the terms of issue of such shares.

(iii) No Nidhi shall have any object in its Memorandum of Association other than 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.

(iv) Every Company incorporated as a "Nidhi" shall have the last words 'Nidhi Limited' as part of its name.

(v) In respect of companies covered under clauses (a) and (b) of rule 3 formed before the commencement of this Act, they shall , within a period of two years from the date of commencement of these rules, change their name in accordance with sub-rule (iv) above and the provisions of the Act.

6. (i) Every Nidhi shall, within a period of one year from the commencement of these rules, ensure that it has:

(a) Not less than two hundred members.

(b) Net Owned Funds of ten lakh rupees or more.

(c) Unencumbered Term Deposits of not less than ten per cent. of the outstanding deposits as specified in rule 15.

(d) Ratio of Net Owned Funds to Deposits of not more than 1:20.

(ii) Within 90 days from the close of the first financial year after its incorporation and where applicable, the second financial year, the Nidhi shall file a Return of statutory compliances in **Form No. 26.1** along with such fee as provided in Annexure 'B' with the Registrar duly certified by a company secretary in practice or chartered accountant or cost accountant.

(iii) If a Nidhi is not in compliance with clauses (a) or (d) of sub-rule (i) above, it shall within 30 days from the close of the first financial year, apply to the Regional Director in **Form No. 26.2** along with fee specified in Annexure 'B' for extension of time and the Regional Director may consider the application and pass orders within 30 days of receipt of the application.

(iv) If the failure to comply with sub-rule (i) of this Rule extends beyond the second financial year, the Nidhi shall not accept any further deposits from the commencement of the second financial year until clauses (a) and (d) of sub-rule (i) of this rule are complied with, besides being liable for penal consequences as provided in the Act.

7. General restrictions/prohibitions

No Nidhi shall-

(i) carry on the business of chit fund, hire purchase finance, leasing finance, insurance or acquisition of securities issued by any body corporate.

(ii) issue preference shares, debentures or any other debt instrument by any name or in any form whatsoever.

(iii) open any current account with its members;

(iv) acquire another company by purchase of securities or control the composition of the Board of directors of any other company in any manner whatsoever or enter into any arrangement for the change of its

management, unless it has passed a special resolution in its general meeting and also obtained the previous approval of the Central Government.

Explanation: For the purposes of this sub-rule, "control" means control as defined in sub-section (27) of section 2 of the Act and "Central Government" means the Regional Director having jurisdiction over the Nidhi.

(v) carry on any business other than the business of borrowing or lending in its own name.

Provided that Nidhis which have adhered to all the provisions of these rules may provide locker facilities on rent to its members subject to the rental income from such facilities not exceeding 20% of the gross income of the Nidhi at any point of time during a financial year.

(vi) accept deposits from or lend to any person, other than its members.

(vii) pledge any of the assets lodged by its members as security.

(viii) take deposits from or lend money to any body corporate.

(ix) enter into any partnership arrangement in its borrowing or lending activities.

(x) issue or cause to be issued any advertisement in any form for soliciting deposit.

Provided that private circulation of the details of fixed deposit schemes among the members of the Nidhi carrying the words "for private circulation to members only" shall not be considered to be an advertisement for soliciting deposits.

(xi) pay any brokerage or incentive for mobilizing deposits from members or for deployment of funds or for granting loans.

8. Share capital and allotment:

(i) Every Nidhi shall issue equity shares of the nominal value of not less than ten rupees each.

(ii) No service charge shall be levied for issue of shares.

(iii) A Nidhi shall not make any preferential allotment of shares to any person(s) but may issue further shares and the unsubscribed portion of the issue can be apportioned by the Board of directors in terms of section 62 of the Act.

(iv) Every Nidhi shall allot to each deposit holder at least a minimum of ten equity shares or shares equivalent to one hundred rupees:

Provided that the account holders of savings account and recurring deposit only may hold at least one equity share of rupees ten.

9. Membership

(i) No Nidhi shall admit any body corporate or trust as a member.

(ii) Except as otherwise permitted under these Rules, every Nidhi shall ensure that its membership is not reduced to less than two hundred members at any time.

(iii) No minor shall be admitted as a member. However, deposits may be accepted in the name of a minor, if they are made by the natural or legal guardian who is a member of the Nidhi.

10. Net owned Funds:

Every Nidhi shall maintain Net Owned Funds (excluding the proceeds of any preference share capital) of not less than ten lakh rupees or such higher amount as the Central Government may specify from time to time.

11 Branches:

(i) A Nidhi may open branches, only if it has earned net profits after tax continuously during the preceding three financial years.

(ii) Subject to compliance with the aforesaid sub-rule:

(a) A Nidhi may open up to three branches within the district.

(b) If a Nidhi proposes to open more than three branches within the district or any branch outside the district, it shall obtain the prior permission of the Regional Director.

(iii) No Nidhi shall open branches or collection centres or offices or deposit centres, or by whatever name called outside the State where its registered office is situated.

(iv) No Nidhi shall open branches or collection centres or offices or deposit centres, or by whatever name called unless financial statement and annual return (up to date) are filed with the Registrar.

12. Acceptance of Deposits by Nidhis:

(i) A Nidhi shall not accept deposits exceeding twenty times of its Net Owned Funds (NOF) as per its last audited financial statements.

(ii) In the case of companies covered under clauses (a) and (b) of rule 3 and existing on or before 26th July, 2001 and which have accepted deposits in excess of the aforesaid limits, the same shall be restored to the prescribed limit by increasing the Net Owned Funds position or alternatively by reducing the deposit according to the table given below:

TABLE

Ratio of Net Owned Funds to Deposits (as on 31.3.2010)	**Date by which the company has to achieve prescribed ceiling of 1:20**
a) More than 1:30 but upto 1:40	By 31.3.2014
b) More than 1:40 but upto 1:45	By 31.3.2015
c) More than 1:45 but upto 1:50	By 31.3.2016

(iii) Companies which are covered under the Table in sub-rule (ii) above shall not accept fresh deposits or renew existing deposits if such acceptance or renewal leads to violation of the prescribed ratio.

(iv) The ratio specified in sub-rule (ii) above shall also apply to incremental deposits.

13. Application form for Deposit

(i) Every application form for placing a deposit with a Nidhi shall contain the particulars given below:

(a) Name of the Nidhi.
(b) Date of incorporation of the Nidhi.
(c) The business carried on by the Nidhi with details of branches, if any.
(d) Brief particulars of the management of the Nidhi (name, addresses and occupation of the directors, including DIN).
(e) Net profits of the Nidhi before and after making provision for tax for the preceding three financial years.
(f) Dividend declared by the Nidhi during the preceding three financial years.
(g) Mode of repayment of the deposit.
(h) Maturity period of the deposit.
(i) Interest payable on the deposit.
(j) The rate of interest payable to the depositor in case the depositor withdraws the deposit prematurely.
(k) The terms and conditions subject to which the deposit may be accepted / renewed.
(l) A summary of the financials of the company as per the latest two audited financial statements as given below:

(i) Net Owned Funds
(ii) Deposits accepted
(iii) Deposits repaid
(iv) Deposits claimed but remaining unpaid
(v) Loans disbursed against

(a) Immovable property
(b) Deposits
(c) Gold and Jewellery

(vi) Profit before Tax
(vii) Provision for Tax

(viii) Profit after Tax
(ix) Dividend per share

(m) any other special features or terms and conditions subject to which the deposit is accepted / renewed.

(ii) The application form shall also contain the following statements:

(a) in case of non- payment of the deposit or part thereof as per the terms and conditions of such deposit, the depositor may approach the Registrar of Companies having jurisdiction over the Nidhi.

(b) in case of any deficiency of the Nidhi in servicing its depositors, the depositor may approach the National Consumers Disputes Redressal Forum, the State Level Consumers Disputes Redressal Forum or District Level Consumers Disputes Redressal Forum, as the case may be, for relief.

(c) A declaration by the Board of directors to the effect that the financial position of the Nidhi as disclosed and the representations made in the application form are true and correct and that the Nidhi has complied with all the applicable rules

(d) A caution to the investor that the Central Government does not undertake any responsibility for the financial soundness of the Nidhi or for the correctness of any of the statement or the representations made or opinions expressed by the Nidhi and for repayment of deposit / discharge of liabilities by the Nidhi.

(e) At the end of the application form but before the signature of the depositor, the following verification clause by the depositor shall be appended :

"I have read and understood the financial and other particulars furnished and representations made by the Nidhi in this application form and after careful consideration I am making the deposit with the Nidhi at my own risk and volition."

(iii) Every Nidhi shall obtain proper introduction of new depositors before opening their accounts or accepting

their deposits and keep on its record the evidence on which it has relied upon for the purpose of such introduction.

(iv) For the purposes of introduction of depositors, the Nidhi shall obtain documentary evidence of the depositor in the form of proof of identity and address as under:

(a) Proof of Identity (any one of the following)

(i) Passport
(ii) Unique Identification Number
(iii) Income-tax PAN card
(iv) Voter's Identity Card
(v) Driving licence
(vi) Ration Card

(b) Proof of address (any one of the following)

(i) Passport
(ii) Unique Identification Number
(iii) Voter's Identity Card
(iv) Driving licence
(v) Ration card
(vi) Telephone bill
(vii) Bank account statement
(viii) Electricity bill

(documents referred to Sl. Nos. (v), (vi) and (vii) above should not be more than two months old)

14. Deposits:

(i) Fixed deposits shall be accepted for a minimum period of six months and a maximum period of sixty months.

(ii) Recurring deposits shall be accepted for a minimum period of twelve months and a maximum period of sixty months. In case of recurring deposits relating to mortgage loans, the maximum period of recurring deposits shall correspond to the repayment period of such loans granted by the Nidhi.

(iii) Savings deposit account shall be opened, provided the maximum balance at any given time qualifying for interest does not exceed fifty thousand rupees at any point of time and the rate of interest shall not exceed two per cent above the rate of interest payable on savings bank account by nationalized banks.

(iv) A Nidhi may offer interest on fixed and recurring deposits at a rate not exceeding the maximum rate of interest prescribed by the Reserve Bank of India which the Non-Banking Financial Companies can pay on their public deposits.

(v) A Fixed Deposit Account or a Recurring Deposit Account may be foreclosed by the depositor subject to the following conditions:

(a) a Nidhi shall not repay any deposit within a period of three months from the date of its acceptance;

(b) where at the request of the depositor, a Nidhi repays any deposit after a period of three months, the depositor shall not be entitled to any interest up to six months from the date of deposit;

(c) where at the request of the depositor, a Nidhi makes repayment of a deposit before the expiry of the period for which such deposit was accepted by the Nidhi, the rate of interest payable by the Nidhi on such deposit shall be reduced by two percent from the rate which the Nidhi would have ordinarily paid, had the deposit been accepted for the period for which such deposit had run.

Provided that in the event of death of a depositor, the deposit may be repaid prematurely to the surviving depositor/s in the case of joint holding with survivor clause, or to the nominee or to legal heir/s with interest up to the date of repayment at the rate which the company would have ordinarily paid, had such deposit been accepted for the period for which such deposit had run.

15. Un-encumbered Term Deposits:

Every Nidhi shall invest and continue to keep invested, in unencumbered term deposits with a scheduled commercial bank (other

than a co-operative bank or a regional rural bank), or post office deposits in its own name an amount which shall not be less than ten per cent of the deposits outstanding at the close of business on the last working day of the second preceding month.

Provided that in cases of unforeseen commitments, temporary withdrawal may be permitted with the prior approval of the Regional Director for the purpose of repayment to depositors, subject to such conditions and time limit which may be specified by the Regional Director to ensure restoration of the prescribed limit of ten per cent.

16. **Loans**

(i) A Nidhi shall provide loans only to its members.

(ii) Loans given by a Nidhi to any member shall be subject to the following ceiling on each loan:

(a) two lakh rupees, where the total amount of deposits of such Nidhi from its members is less than two crore rupees.

(b) seven lakh fifty thousand rupees, where the total amount of deposits of such Nidhi from its members is more than two crore rupees but less than twenty crore rupees.

(c) twelve lakh rupees, where the total amount of deposits of such Nidhi from its members is more than twenty crore rupees but less than fifty crore rupees.

(d) fifteen lakh rupees, where the total amount of deposits of such Nidhi from its members is more than fifty crore rupees:

Provided that where a Nidhi has not made profits continuously in the three preceding financial years, it shall not make any fresh loans exceeding fifty per cent. of the maximum amounts of loans specified in clauses (a), (b), (c) or (d) above.

(iii) For the purposes of sub-rule (ii), the amount of deposits shall be calculated based on the last audited annual financial statements.

(iv) A Nidhi shall give loans to its members only against the following securities:

(a) Gold, silver and jewellery

Provided that the repayment period of such loan shall not exceed one year.

(b) Immovable property

Provided that the total loans against immovable property (excluding mortgage loans granted on the security of property by registered mortgage, being a registered mortgage under section 69 of the Transfer of Property Act, 1882) shall not exceed fifty percent of the overall loan outstanding on the date of approval by the board, the individual loan shall not exceed fifty percent of the value of property offered as security and the period of repayment of such loan shall not exceed seven years.

(c) Fixed deposit receipts, National Savings Certificates, other Government Securities and insurance policies

Provided that such securities duly discharged shall be pledged with the Nidhi and the maturity date of such securities shall not fall beyond the loan period or one year whichever is earlier:

Provided further that in the case of loan against fixed deposits, the period of loan shall not exceed the unexpired period of the fixed deposits.

17. Rate of interest

The rate of interest to be charged on any loan given by any Nidhi shall not exceed seven and half per cent above the highest rate of interest offered on deposits by the Nidhi and shall be calculated on reducing balance method:

Provided that the Nidhi shall charge the same rate of interest on the borrowers in respect of the same class of loans and the rates of interest of all classes of loans shall be prominently displayed on the notice board at the registered office and each branch office of the Nidhi.

18. Rules relating to Directors

(i) A director shall be a member of the Nidhi.

(ii) A director of a Nidhi may hold office for a term up to ten consecutive years on the Board of the Nidhi.

(iii) The director referred to in sub rule (ii) above shall be eligible for further appointment only after the expiration of two years of ceasing to be a director.

(iv) Where the tenure of any director in any case had already been extended by the Central Government, it shall terminate on expiry of such extended tenure.

(v) The person to be appointed as a director shall comply with the requirements of sub-section (4) of section 152 of the Act and should not have been disqualified from appointment as provided in section 164 of the Act.

19. Dividend

A Nidhi shall not declare dividend exceeding twenty five percent or such higher amount as may be specifically approved by the Regional Director for reasons to be recorded in writing and further subject to the following conditions:

(a) an equal amount is transferred to General Reserve.

(b) there has been no default in repayment of matured deposits and interest.

(c) it has complied with all the rules as applicable to Nidhis.

20. Auditor:

(i) No person or firm appointed as Auditor of the Nidhi for a continuous period of five years shall be re-appointed as auditor.

(ii) For the purposes of the aforesaid sub-rule, no partner of the firm or any associate of the same firm either in that capacity or in any other individual capacity shall be eligible for reappointment.

21. Prudential norms:

(1). Every Nidhi shall adhere to the prudential norms for revenue recognition and classification of assets in respect of mortgage loans or jewel loans as contained hereunder.

(2). Income including interest or any other charges on non-performing assets shall be recognised only when it is actually realised. Any such income recognised before the asset became non-performing and which remains unrealised in a year shall be reversed in the profit and loss account of the immediately succeeding year.

(3). (a) In respect of Mortgage Loans, the classification of assets and the provisioning required shall be as under:

NATURE OF ASSET	PROVISION REQUIRED
Standard Asset	No provision
Sub-standard Asset	10% of the aggregate outstanding amount
Doubtful Asset	25% of the aggregate outstanding amount
Loss Asset	100% of the aggregate outstanding amount

(b) The estimated realisable value of the collateral security to which a Nidhi has valid recourse may be reduced from the aggregate outstanding amount, if the proceedings for the sale of the mortgaged property have been initiated in a court of law within the previous two years of the interest, income or instalment remaining unrealised.

(4). Time limit for compliance

In case of companies which were incorporated on or before 26-07-2001, such companies shall make provisions in respect of loans disbursed and outstanding as on 31-03-2002 for income reversal and non-performing assets as per table given below:

For the year ended	Extent of provision
31-03-2014	Un-provided balance on equal basis over the three years as specified in the preceding column.
31-03-2015	
31-03-2016	

(5). A Nidhi may, if it so desires, make provision exceeding the percentage specified in the preceding sub-rule.

(6).(a) The Notes on the financial statements of a year should clearly disclose:

(i) The total amount of provisions, if any, to be made on account of income reversal and non-performing assets remaining unrealised;

(ii) The cumulative amount provided till the previous year;

(iii) The amount provided in the current year; and

(iv)The balance amount to be provided.

(b) Such disclosure shall continue to be made until the entire amount to be provided has been provided for.

(7) In respect of loans against gold or Jewellery:

(a) The aggregate amount of loan outstanding against the security of gold or jewellery shall either be recovered or renewed within three months from the due date of repayment.

(b) If the loan is not recovered or renewed and the security is not sold within the aforesaid period of three months, the company should make provision in the current year's financial statements to the extent of unrealised amount or the aggregate outstanding amount of loan including interest as applicable.

(c) No income shall be recognised on such loans outstanding after the expiry of the three months period specified in (a) above or sale of gold or jewellery, whichever is earlier.

22. Every company covered under rule 3 shall file half yearly return with the Registrar in **Form No**. **26.3** along with such fee as provided in Annexure 'B' within 30 days from the conclusion of each half year duly certified by a Company Secretary in practice/Chartered Accountant/Cost Accountant without filing fees.

23. Auditor's Certificate

The Auditor of the company shall furnish a certificate every year to the effect that the company has complied with all the provisions contained in the Rules and such certificate shall be annexed to the Audit Report and in case of non-compliance, he shall specifically state the rules which have not been complied with.

24. Power to enforce compliance

(i) For the purposes of enforcing compliance with the Rules prescribed under this Chapter, the Registrar of Companies may call for such information or returns from the Nidhi as he deems necessary and may engage the services of chartered accountants, company secretaries in practice, cost accountants, or any firm thereof from time to time for assisting him in the discharge of his duties.

(ii) In respect of any Nidhi which has violated these rules or has failed to function in terms of the Memorandum and Articles of Association, the concerned Regional Director may appoint a Special Officer to take over the

management of the Nidhi and such Special Officer shall function as per the guidelines given by such Regional Director.

Provided that an opportunity of being heard shall be given to the concerned Nidhi by the Regional Director before appointing any Special Officer.

25. Penalty for non-compliance

If a company falling under rule 3 contravenes any of the provisions of the rules prescribed herein, the company and every officer of the company who is in default shall be punishable in the manner provided in section 450 of the Act.

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DRAFT RULES UNDER COMPANIES ACT, 2013

National Company Law Tribunal (Salary, Allowances and other Terms and Conditions of Service of President and other Members) Rules 2013

In exercise of the powers conferred by section 414 read with sub-section (2) of section 469 of the Companies Act, 2013 , the Central Government hereby makes the following rules, namely: -

1. Short title and commencement. -

(1) These rules may be called the National Company Law Tribunal (Salary, Allowances and other Terms and Conditions of Service of President and other Members) Rules, 2013.

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

2. Definitions. –

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

(a) "Act" means the Companies Act, 2013 (of 2013);

(b) "President" means the President of the Tribunal appointed under section 408 of the Act;

(c) "Tribunal " means the National Company Law Tribunal constituted under section 408 of the Act;

(2) Words and expressions used in these rules but not defined, shall have the same meanings respectively assigned to them in the Act.

3. Pay.

(1) The President shall be entitled to a monthly salary, and to such allowances and other benefits, as are admissible to a High Court judge. (High Court of the Headquarter station of the Tribunal)

(2) A Judicial Member shall be paid salary as under:

(a) When a serving or a retired Judge of the High Court, is appointed as a Judicial Member, he shall be entitled to a monthly salary, and to such allowances and other benefits, as are admissible to a serving Judge of the High Court of the Headquarter station of the Tribunal .

(b) When a serving or a retired District Judge, is appointed as Judicial Member, he shall be entitled to a monthly salary and to such allowances and other benefits as are admissible to a serving District Judge of the Headquarter station of the Tribunal.

(c) when an advocate of a Court is appointed as Judicial Member, he shall be entitled to a salary allowances and other benefits in Grade Pay of rupees twelve thousand in Pay Band-4 (rupees 37400-67000).

Provided that in case the retired Judge of the High Court or the retired District Judge , is in receipt of, or has received or has become entitled to receive any retirement benefits by way of pension, gratuity, employers contribution to the Contributory Provident Fund or other forms of retirement benefits, the pay of such member shall be reduced by the gross amount of pension or employers contribution to the Contributory Provident Fund or any other form of retirement benefits, if any (except pension equivalent of gratuity), drawn or to be drawn by him.

(3) A Technical Member shall be entitled to a salary, allowances and other benefits in Grade Pay of rupees twelve thousand in Pay Band-4 (rupees 37400-67000) .

Provided that the in the case of a retired member has been a member of the Indian corporate law service or Indian legal service and is in receipt of, or has received or has become entitled to receive any retirement benefits by way of pension, gratuity, employers contribution to the Contributory Provident Fund or other forms of retirement benefits, the pay of such member shall be reduced by the gross amount of pension or employers contribution to the Contributory Provident Fund or any other form of retirement benefits, if any (except pension equivalent of gratuity), drawn or to be drawn by him.

Provided further that in case of serving member of Indian Corporate Law Service or serving member of Indian Legal Service, who have been appointed as Technical Member of the Tribunal, shall be entitled for all the service benefits till his superannuation. After the date of his supperannuation, his salary and other terms shall be in accordance with the terms of retired member and appointed as Technical Member as above.

4. Contributory Provident Fund. –

(1) The President and other Members shall be governed by the provisions of the Contributory Provident Fund Rules (India), 1962 and no option to subscribe under the General Provident Fund (Central Services) Rules, 1960 shall be available.

(2) No additional pension and gratuity shall be admissible for service rendered in the Tribunal .

5. Leave. –

(1) The President and every other Member shall be entitled to thirty days of Earned Leave for every year of service.

(2) The payment of leave salary during leave shall be governed by rule 40 of the Central Civil Services (Leave) Rules, 1972.

(3) The President and every other Member shall be entitled to encashment of fifty per cent of Earned Leave standing to their credit at any time.

6. Leave Sanctioning Authority

In the case of the President, Chairperson of the National Company Law Appellate Tribunal, and in the case of the members, the President, shall be the leave sanctioning authority.

7. Travelling Allowances

The President and other Members of the Tribunal while on tour within India or on transfer (including the journey undertaken to join the Tribunal or on the completion of their tenure with the Tribunal to proceed to their home town) shall be entitled to the travelling allowance, daily allowance transportation of personal effects and other similar matters at the same rates as applicable to officers of the Central Government in Apex Grade (rupees eighty thousand-fixed) in the case of President and Grade Pay of rupees twelve thousand in the Pay Band-4 (rupees 37400-67000) in the case of Members.

8. Official visits abroad. –

Official visits abroad by the President or Members shall be undertaken only in accordance with orders issued by the Central Government and they shall be entitled to draw such allowances in respect of such visits as applicable to

officers of the Central Government in Apex Grade (rupees eighty thousand-fixed) in the case of President and Grade Pay of rupees twelve thousand in the Pay Band-4 (rupees 37400-67000) in the case of Members.

9. Leave Travel Concession. –

The President and other Members of the Tribunal shall be entitled to Leave Travel Concession (LTC) at the same rates as applicable to officers of the Central Government in Apex Grade (rupees eighty thousand-fixed) in the case of President and Grade Pay of rupees twelve thousand in the Pay Band-4 (rupees 37400-67000) in the case of Members.

10. Facility for Medical Treatment.-

The President and other Members shall be entitled to medical treatment and hospital facilities as provided in the Central Government Health Scheme (CGHS) to a retired Government servant. At places where the said Scheme is not in operation, the President and other Members shall be entitled to the facilities as provided in the Central Service (Medical Attendance) Rules, 1944.

11. Applicability of rules:-

(1) When a serving Judge of the High Court is appointed as the President or Member of the National Company Law Tribunal, his terms and conditions of service shall be the same as were applicable to him prior to his appointment as the President or Member ;

Provided that in case of superannuation of President or Member as Judge before the expiry of his term as President or Member, his terms and conditions of service shall be the same as are applicable to a retired Judge of the High Court, under these rules, for remainder period of his term.

(2) Chairman, Vice-chairman and Members of the Company Law Board, who fulfill the qualifications and requirements provided under the Act shall continue to function as President or Members of the Tribunal only on the recommendations of the Chief Justice of India, in the case of the President, and on recommendation of Selection Committee, constituted under section 412 of the Act, in case of Members.

(3) When a person who is in Government Service or employed in any Public Sector Undertaking or any Authority including Autonomous Body of the Government covered under para (3) of this Rule, he shall be entitled for all the service benefits till his superannuation. After the date of his superannuation, his salary and other terms shall be in accordance with the terms of retired person who is appointed as Technical Member. In case a retired person is appointed as a Member his salary and other terms would be governed in accordance with the terms of the retired person (i.e., after making necessary adjustments of post-retirement benefits).

12. Other Conditions of Service. –

Matters relating to the terms and conditions of service of the President or other Members with respect to which no express provision has been made in these rules, shall be referred by the Tribunal to the Central Government for its decision, and the decision of the Central Government thereon shall be final.

13. Oath of office and secrecy:-

(1) Every person appointed as the President shall, before entering upon his office, make and subscribe an oath of office and secrecy, in Form I and Form II annexed to these rules.

(2) Every person appointed as a member shall, before entering upon his office, make and subscribe an oath of office and secrecy, in Form I and Form II annexed to these rules.

14. Declaration of financial or other interest:-

Every person, on his appointment as the President or Member, as the case may be, shall give a declaration in Form III annexed to these rules, to the satisfaction of the Central Government, that he does not have any such financial or other interest as is likely to affect prejudicially his functions as President or Member, as the case may be.

15. Powers to relax:-

The Central Government shall have power to relax any provision of these rules with respect to any class or category of persons.

Form - I

(See rule 11)

Form of oath of office for President or Members of the National Company Law Tribunal

"I, ..., having been appointed as President or member of the National Company Law Tribunal

do solemnly affirm

swear in the name of God

that I will faithfully and conscientiously discharge my duties as President or member to the best of my ability, knowledge and judgment, without fear or favour, affection or ill-will."

Signature: .....

Place: .....

Name: .....

Designation: .....

Date: .....

Form - II

(See rule 11)

Form of oath of secrecy for President or Members of the National Company Law Tribunal

"I, ..., having been appointed as President or member of the National Company law Appellate Tribunal

do solemnly affirm

swear in the name of God

that I will not directly or indirectly communicate or reveal to any person or persons any matter which shall be brought under my consideration or shall become known to me as President or member of the said Tribunal except as may be required for the due discharge of my duties as President or member."

Signature: .....

Place: .....

Name: .....

Designation: .....

Date: .....

Form - III

(See rule 12)

Declaration against acquisition of any adverse financial or other interest

I, ..., having been appointed as the President or Member (cross out portion not applicable) of the National Company Law Tribunal, do solemnly affirm and declare that I do not have, nor shall have in future any financial or other interest which is likely to affect prejudicially my functioning as the President or Member (cross out portion not applicable), of the National Company Law Tribunal.

Signature: .....

Place: .....

Name: .....

Designation: .....

Date: .....

DRAFT RULES UNDER COMPANIES ACT, 2013

CHAPTER XXVII

NATIONAL COMPANY LAW TRIBUNAL RULES, 2013

In exercise of the powers conferred by section 469 read with section 408 of Companies Act, 2013 the Central Government hereby makes the following rules namely:-

Part I
Preliminary

Short title and Commencement –

1. (1) These rules shall be called the National Company Law Tribunal Rules, 2013.

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

(3) The General Clauses Act, 1897 (10 of 1897) applies to the interpretation of these rules as it applies to the interpretations of a Central Act.

(4) The requirements with regard to any approval or proceeding etc of or before the Tribunal provided under any other rule made under the Act shall be in addition to the requirements provided under these rules.

(5) These rules shall also be applicable for the proceedings before the Tribunal in case of limited liability partnerships under LLP Act, 2008 or rules made thereunder and in case of any inconsistency between rules made under the LLP Act, 2008 and these rules, these rules shall apply.

Definitions

2. In these rules, unless the context or subject- matter otherwise requires,

(1) **"Act"** means the Companies Act, 2013.

(2) **"Address for service"** shall mean the address furnished by a party or his authorized representative at which service of summons, notices or other processes may be effected by these rules;

(3) **"Appellate Tribunal"** means the National Company Law Appellate Tribunal constituted under section 410 the Act;

(4) **"Applicant"** means a petitioner or an appellant or any other person or entity capable of making an application including an interlocutory application or a petition or an appeal under the Act:

Provided that in respect of the matters pertaining to "Revival and Rehabilitation of Sick Companies" under Chapter XIX of the Act, the term "Applicant" shall mean and include the following:

(a) 'secured creditor (s)' of a company representing 50% or more of its outstanding amount of debts, which the Company has failed to pay within 30 days of the notice of demand or to secure or compound it to the reasonable satisfaction of the creditor as per the provisions contained in sub-section (1) of section 253 of the Act,

(b) the company, on failing to pay the debt to its secured creditors to the extent of 50% or more of its outstanding debts within 30 days of the receipt of notice of demand or to secure or compound it to the reasonable satisfaction of the secured creditor.

(c) the Central Government or the Reserve Bank of India or a State Government or a public financial institution or a State Level Institution or a scheduled bank being an authority which has made a reference in respect of sick company to the Tribunal under sub-section (5) of section 253.

(5) **"Application"** means any application filed under the provisions of the Act, and also includes any written representation seeking interim orders before the Tribunal.

(6) "**Annexure**" means an Annexure to these rules;

(7) **"Authorised Representative**" means a person authorised in writing by a party to present his case before the Tribunal as the representative of such party as provided under section 432 of the Act;

(8) **"Bench"** means a Bench of the Tribunal constituted under section 419 of the Act.

(9) **"Body Corporate"** means the body corporate as defined in sub-section (11) of section 2 of the Act, and includes:

(i) a limited liability partnership registered under the Limited Liability Partnership Act, 2008;

(ii) a limited liability partnership incorporated outside India;

(10) **"Central Registry"** means the registry in which all the applications or petitions and documents are received electronically by the Registrar for allocation to the concerned Bench of the Tribunal for disposal;

(11) **"Certified"** means in relation to a copy as hereunder:

a. Certified as provided in section 76 of the Indian Evidence Act, 1872; or

b. Certified as provided in section 6 of Information Technology Act, 2000 ; or

c. A copy of document as may be a downloaded version from e-registry under MCA 21 or any other similar authorized portals or Dedicated Portal Online as may be given name thereto by the Central Government in instance or a photo copy of original pertaining to any company registered with the Office of the Registrar of Companies of the concerned state; and

d. A certified copy issued by the Registrar of Companies under the Act;

(12) **"Certified by Tribunal"** means in relation to a copy, certified to be a true copy issued by the Registry of the Tribunal or of a bench of the Tribunal under its hand and seal and as provided in Section 76 of the Indian Evidence Act, 1872;

(13) **"Certifying Authority"** means a person who has been granted a license to issue a Digital Signature Certificate under section 24 of the Information Technology Act, 2000 (21 of 2000);

(14) **"Chairperson", "Judicial Member", "Member", "President" and "Technical Member"** of the Tribunal or Appellate Tribunal shall have the same meanings as provided in section 407 of the Act;

(15) **"Court"** means the court as defined in sub-section (29) of section 2 of the Act;

(16) **"Dedicated Portal Online"** refers to an "Hyper Text Transfer Protocol" for the purpose of electronic transmission of documents to the Tribunal

for hearing and disposal in pursuance of the provisions of the Act and includes MCA-21 portal;

(17) **"Digital signature"** means authentication of any electronic record by a subscriber by means of an electronic method or procedure in accordance with the provisions of section 3 of the Information Technology Act, 2000 and includes a graphic image of a handwritten signature;

(18) **"Digital Signature Certificate"** means a Digital Signature Certificate issued under sub-section (4) of section 35 of the Information Technology Act, 2000;

(19) **"Document"** means summons , notice, requisition, a pleading, plea, motion, application, request, exhibit, brief, memorandum of law, paper, or any other instrument in paper form or electronic form and other legal process, and registers, whether issued, sent or kept in pursuance of the Act and Rules made there under or any other Act or otherwise; but, does not include orders of the Tribunal;

(20) **"EDGAR (Electronic Data Gathering, Analysis and Retrieval) Filer Manual"** means the current version of the manual prepared by the Tribunal setting out the technical format requirements for an electronic filing of Application or other documents with the Tribunal;

(21) "**Electronic Format**" means the computerized format of a document prepared in accordance with Electronic Data Gathering, Analysis, and Retrieval (EDGAR);

(22) "**Electronic Filer**" means an Applicant who files Application or other documents with the Tribunal electronically;

(23) **"Electronic Filing"** is a process by which a filer files a document with the Registry of the Tribunal by means of an online computer transmission of the document in electronic form other than by means of fax or e-mail.

(24) **"Electronic order"** means a computerized, non-paper Tribunal order that a Member or Members of the Tribunal signs by applying his or her digitized signature to the order.

(25) **"Electronic service"** is a method of serving a document upon a party by electronically transmitting the document to that party's e-mail address.

(26) **"Electronic Registry"** means an electronic repository or storage system which receives, stores, protects, preserves and retrieves an application or a Petition or any reply and rejoinder to the application, petition and other addendum to the pleadings in electronic form by the Tribunal;

(27) **"Fee"** means the amount payable in pursuance of the provisions of the Act, and these rules for any petition or application or interlocutory application or a document or for certified copy of document or order of the Tribunal or such other paper as may be specified in "Annexure -B" to these rules and includes any modifications as may be made thereto or any fee as prescribed for electronic filing of documents to the Tribunal by these rules;

(28) **"Filer"** means a person including an authorized representative of that person or any party to the proceedings who files any document with the Tribunal in relation to case filed under the Act, or any rules there under.

(29) **"Filed"** means filed in the office of the Registry of the Tribunal**;**

(30) **"Filing fees"** means the fees as applicable in terms of Annexure- B in connection with the application filed;

(31) **"Form"** means a form specified in **Annexure –C**;

(32) **"Party"** means a person(s) who files a petition or an application before the Tribunal and includes a respondent(s), the Registrar of Companies or the Regional Director or Ministry of Corporate Affairs and any person who has a right under the Act, or the Reserve Bank of India Act 1934 (2 of 1934) to make suggestions or submissions or objections or file reply;

(33) **"Petition"** means a petition or an application or an Appeal or a Complaint in pursuance of which any proceeding is commenced before the Tribunal.

(34) **"Person(s) Interested"** means a shareholder, creditor or employee of a sick company, transferee company and other company concerned in relation to the term or context referred to in relevant provisions of the Act;

(35) **"Pleadings"** means and includes the original application, petitions, applications, reply, statements, counter claim, additional statement supplementing the original applications and reply statements including electronic form as prescribed by these rules and as may be permitted by the Tribunal;

(36) "**Pre-fill**" means the automated process of data input by the computer system from the database maintained in electronic registry of either the Tribunal or Ministry of Corporate Affairs;

(37) **"Prescribed"** means prescribed by these rules; and 'prescribed charges' and 'prescribed fees' mean charges or fees prescribed by these rules and where they are not so prescribed, prescribed by the rules of the Tribunal;

(38) **"Prescribed period"** means that the respective or relevant period to be reckoned as defined in the Limitation Act, 1963.

(39) **Reference**" means a reference within the meaning of Rule 108 of these Rules;

(40) "**Registrar of Companies"** includes Additional Registrar, Joint Registrar, Deputy Registrar or an Assistant Registrar.

(41) "**Registrar" i**n relation to the Tribunal, means the Registrar appointed to the Principal Bench and in relation to each of the Benches of the Tribunal shall mean an officer of the Central Government so appointed or designated as Registrar or in his absence such other officer of the Tribunal or Bench to whom the powers and functions of the Registrar be delegated.

(42) "**Registry"** means the Registry of the Tribunal or any of its Benches, as the case may be which keeps records of the applications and documents relating thereto;

(43) **"Reserve Bank"** means the Reserve Bank of India and includes its branches and agencies as defined in the Reserve Bank of India Act, 1934;

(44) **"The rules"** mean these rules and include the Rules of the Tribunal regulating the Electronic Filing of Documents and forms prescribed thereto.

(45) "**Sealed"** means sealed with the seal of the Tribunal.

(46) **"Secretary**" means Secretary to the Tribunal and in the absence of Secretary, such other officer of the Tribunal to whom the powers and functions of the Secretary be delegated.

(47) **"Service of Notice or Document"** includes the electronic service in addition to other modes of services.

(48) **"Secured Creditor"** means and includes bank or financial institution or any consortium or group of banks or financial institutions which have lent any money to the company and subject to the compliance with the relevant provisions of the Act includes the following-

(i) debenture trustee appointed by any bank or financial institution; or
(ii) securitization company or reconstruction company, whether acting as such or managing a trust set up by such securitization company or reconstruction company for the securitization or reconstruction, as the case may be; or

(iii)any other trustee holding securities on behalf of a bank or financial institution, in whose favour security interest is created for due repayment by any borrower of any financial assistance;

(iv) any person in whose favour, a charge is created on any asset or assets of a company towards a security for the loan borrowed or secured or extended as a guarantee in whomsoever favour it may be on his behalf or other's behalf either singularly or jointly in association with other .

(49) **"Sick Company"** means and includes a company, which has failed to pay the debt of its secured creditors within 30 days of the notice of demand or to secure or compound it to the reasonable satisfaction of the secured creditors as per section 253 of the Act;

(50) **"Transferred Application" or "Transferred Petition"** means proceedings which have been transferred to the Tribunal from High Court, or Company Law Board or any other court or Tribunal as provided in section 434 of the Act, and shall also include the matters in respect of which the schemes for revival have been sanctioned as per the provisions of Sick Industrial Companies Act, 1985

(51) **"Tribunal"** means the National Company Law Tribunal constituted under section 408 of the Act, and includes its Benches;

(52) **"Words"** expressed in singular may be understood as plural or vice versa if the context so warrants. Likewise, 'He/his' may be referred to 'She/her' or vice versa. Petition may also be construed as application or appeal or complaint vice versa depending upon the reference which warrants so.

(53) **"Words and Expressions"** used and not defined in these rules but defined in the Act, Competition Act, 2002, the Recovery of Debts Due to Banks And Financial Institutions Act, 1993, the Securitization And Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, the Securities Contracts (Regulation) Act, 1956 the Securities and Exchange Board of India Act, 1992 the Depositories Act, 1996; Information Technology Act, 2000; and General Clauses Act, 1897, shall have the meanings respectively assigned to them in those Acts and rules made thereunder.

(54) Till the implementation of the E-filing system by the Tribunal the documents including petitions, applications etc may be filed physically;

PART II

GENERAL PROCEDURE

Powers to determine procedure in certain circumstances.

3. In a situation not provided for in these rules, the Tribunal may, for reasons to be recorded in writing, determine the procedure in a particular case.

4. Territorial Jurisdiction of the Tribunal and its Benches:

1. The National Company Law Tribunal shall have a principal Bench and such number of other Benches with territorial jurisdiction of each Bench as prescribed in **Annexure A**.

2. If an application or a petition is received or transmitted through electronic mode in the manner as provided in Part III of these rules by registry of a bench which does not have territorial jurisdiction to deal with the matter, the Registry of the Bench shall return or retransmit the application or a petition to the applicant advising him to file it with the Bench having a proper jurisdiction.

3. Notwithstanding anything contained in sub-rule 2 the applicant may apply to the President and the President may thereupon for reason to be recorded direct a Bench other than the Bench before which an application or a petition has been filed to hear such application and issue such orders as may be necessary for the transfer of the application. The President of the Tribunal may delegate this power to any member of Bench(s).

5. Language of the Tribunal

1. The pleadings before the Tribunal may be conducted either in English or in Hindi and in case it is in some other Indian language, it shall be accompanied by a copy translated either in English or in Hindi attested by a translator and counter-signed by the party concerned.

2. All orders and judgements of the Tribunal may be either in English or Hindi.

6. Proceedings and Procedure for Filing Pleadings:

1. Every proceeding shall be dated and shall be instituted in the matter of the Act and in the matter of the company to which it relates. The contents shall be divided into separate paragraphs, neatly and legibly type written, lithographed or printed in double spacing on one side of standard petition paper with an inner margin of about four centimeters width on top and with a right margin of 2.5 cm, and left margin of 5 cm, duly paginated, indexed and stitched together in paper book form. Numbers

and dates shall be expressed in figures and where dates given are not according to the English Calendar, the corresponding English dates shall also be given.

2. A petition or an application, including any reply or documents related thereto, to the Tribunal shall be filed to the Registry of the Tribunal or such Bench (s) having territorial jurisdiction thereto in respective forms as provided in **Annexure-C** as the case may be either by the applicant in person or by his duly authorized representative.

3. After introduction of the e-filing mode of petition or application, the Tribunal may after satisfying itself permit the applicant or the respondent or such other party to file a petition or an application referred to in sub-rules (1) and (2) in physical form i. e. by sending the same through registered post or speed post to the concerned registry. In such case, the concerned registry shall receive the application in physical form to scrutinize and scan the application and convert it into electronic file in the manner as practicable as the case may be and process the e-file as if it were an original application received in the regular procedure under sub-rule (1) or under Part III of these rules.

4. A petition or application sent by post under sub-rule (3) shall be deemed to have been filed to the Registry on the day on which it is received by the Tribunal.

5. The petition or application under sub-rule (2) or (3) shall be presented in triplicate or as may be decided by the Tribunal**.**

6. The Applicant shall get the notices endorsed from the Registry for the purpose of service on the respondent and shall file the affidavit of service in proof at least 3 days before the date fixed for hearing.

7. The general heading in all proceedings before the Tribunal, in all advertisements and notices shall be in **Form No. 4.**

8. Every petition or application shall be filed in e-form as provided in **Form No. 1** with attachments thereto accompanied by **Form No. 2** and in case of an interlocutory application, the same shall be filed in **Form No. 1** accompanied by such attachments thereto along with **Form No. 3.** Interlocutory application shall be in **Form 3A.** Every petition or application including interlocutory application shall be verified by an affidavit in **Form No.6.** Notice to be issued by the Tribunal to the opposite party shall be in **Form 5.**

7. Documents to Accompany the Petition or Application:

(1) A petition or an application shall be accompanied by documents as prescribed in Annexure D and shall be as per the procedure for e-filing manual as may be issued by the Tribunal in such manner and as may be named by the Tribunal and shall be accompanied by an Index of Documents.

(2) Documents referred to in sub-rule (1) may be attested as True Copy by the party or the authorized representative and the documents shall be marked serially as Annexures A1, A2, A3 and so on.

(3) The petition or application shall be accompanied by a memorandum of appearance or a power of attorney or a duly executed Vakalatnama as specified in Rule 68.

8. Contents of petition - Every petition, other than an application filed under rule 107 shall set forth the name of the company, with its status, date of incorporation, the address of its registered office, authorized capital, paid-up share capital with division of different classes of shares and terms of issue, if any, in the case of preference shares, main objects in brief, for which the company was formed, present business activities of the company, latest audited accounts and auditors report and also latest financial position and shall also set forth concisely under distinct heads the grounds for such petition and the nature of relief(s) prayed for.

9. Contents of interlocutory application - An application filed subsequent to the filing of the petition applying for any interim order or direction shall, be in Form No. 3 A in Annexure C and shall be accompanied by an affidavit verifying the application in the manner laid down in sub-rule (8) of rule 6 i.e. in **Form 6**:
Provided that it shall not be necessary to present a separate application to seek an interim relief or direction, except for condonation of delay in filing the petition, if, in the original petition, the same is prayed for.

10. Scrutiny of Petition or Application(s):

(1) The Registrar shall receive, register the petition (s) or application (s) or otherwise as provided in the rules under this Part.

(2) The Registrar, or the officer authorised by him, shall endorse on every petition or application, the date on which it is presented or received through post if the Tribunal or such Bench has granted permission for filing such application (s) in physical form under sub-rule (3) of the rule 6 and sign the endorsement :-

(a) If, on scrutiny, the petition or application is found to be in order, it shall be registered and given a serial number.

(b) If the petition or application, on scrutiny, is found to be defective, the Registrar may allow the applicant to rectify the same within seven days from the date of intimation.

(c) If the applicant fails to rectify the defect within the time allowed under sub-rule (b), the Registrar may, by order and for reasons to be recorded in writing, decline to register the petition or application and inform the applicant accordingly within seven days from the time allowed.

(3) An appeal against the order passed under clause (c) of sub-rule (2) may be preferred by the person aggrieved within fifteen days from the date of such order to the President of the Principal Bench or any Member to whom the power is vested and at other places designated member of the Bench and such appeal shall be dealt with and disposed of in Chamber by the President or such Member whose decision thereon shall be final.

11. Advertisement detailing petition.

(1) Where any application, petition or reference is required to be advertised, it shall, unless the Tribunal otherwise orders, or these rules otherwise provide, be advertised in **Form No 3 B**, not less than fourteen days before the date fixed for hearing, at least once in a vernacular newspaper in the principal vernacular language of the district in which the registered office of the proposed company is situated, and circulating in that district, and at least once in English language in an English newspaper circulating in that district.

(2) Every such advertisement shall state:

(a) the date on which the application, petition/ reference was presented,

(b) the name and address of the applicant petitioner and his authorized representative, if any;

(c) the nature and substance of application, petition/ reference;

(d) the date fixed for hearing;

(e) a statement to the effect that any person whose interest is likely to be affected by the proposed petition or who intends either to oppose or support the petition/ reference at the hearing shall send a notice of his intention to the petitioner or his authorized representative so as to reach him not later than two days previous to the day fixed for hearing.

(3) Where the advertisement is being given by the company, then the same shall also be placed on the website of the company, if any.

(4) An affidavit shall be filed to the Tribunal in, not less than 3 days before the date fixed for hearing, stating whether the petition has been advertised in accordance with this rule and whether the notices, if any, have been duly served upon the persons required to be served:

Provided that such an affidavit shall be accompanied with such proof of advertisement or of the service, as may be available.

(5) Where the requirements of this rule or the direction of the Tribunal, as regards the advertisement and service of petition, are not complied with, the Tribunal may either dismiss the petition or give such further directions as it thinks fit.

(6) The Tribunal may, if it thinks fit, dispense with any advertisement required by this rule.

12. Maintenance of Cash Register:

(1) If any payment has been received by way of Indian postal orders or demand drafts or in cash by the Registry, the transaction shall be entered immediately by the Registration Clerk on their receipt side in a Cash Register kept for the purpose**.**

(2) On every next working day or the last working day of the week, the payments received during such day or week by way of Indian postal orders or demand drafts shall be transmitted by the Registration Clerk to the concerned official vested with the work pertaining to the Cashier who after scrutiny and verification shall acknowledge the receipt of all moneys in the Cash Register.

(3) The payments received in cash register shall be transmitted by the Registration Clerk to the official as per sub-rule (2) on each day, who after verification shall acknowledge the receipt of all moneys in the Cash Register.

(4) The official under sub-rule (2) and (3) shall deposit all payments received by way of Indian postal order or demand draft or cash in the Bank account of the Tribunal.

13. Notice in Form No. 5 to Opposite Party-

(1) The Tribunal shall issue notice in **Form No.5** to the respondent to show cause against the application on a date of hearing to be specified therein. Such notice in **Form No.5** shall be accompanied by a copy of the application.

(2) If the respondent does not appear on the date specified in the notice in **Form No.5** or appears and admits, the Tribunal shall forthwith proceed to dispose of the application.

(3) If the respondent contests thereto, it may file a reply along with copies of such documents on which it relies on or before the date of hearing and such reply and copies of documents shall form part of the record.

14. Service of Notices and Processes Issued by the Tribunal:

(1) Any notice or process to be issued by the Tribunal may be served in electronic form at the valid e-mail address as provided in the petition or application or in the reply.

(2). Such notice or process if to be served physically may be served in any one of the following modes as may be directed by the Tribunal:

(a) by hand delivery through a process server or respective authorized representative;
(b) by registered post or speed post with acknowledgement due or ;
(c) service by the party himself.

(3) Where a notice issued by the Tribunal is served by the party himself by "hand delivery", he shall file with the Registrar the acknowledgment together with an affidavit of service.

(4) Notwithstanding anything contained in sub-rules (1) and (2), the Tribunal may after taking into account the number of respondents and their place of residence or work or service could not effected in any manner and other circumstances, direct that notice of the petition or application shall be served upon the respondents in any other manner, including any manner of substituted service, as it appears to the Tribunal just and convenient.

(5) A notice or process may also be served on an authorized representative of the applicant or the respondent, as the case may be, in any proceeding or on any person authorized to accept a notice or a process, and such service on the authorized representative shall be deemed to be a proper service.

(6) Where the Tribunal directs a service under sub-rule (4), such amount of charges, as may be determined by the Tribunal from time to time, but not exceeding the actual charges incurred in effecting the service, shall be deposited with the registry of the Tribunal.

15. Filing of Affidavit

(1) The Tribunal may direct the parties to give evidence, if any, by affidavit.

(2) Notwithstanding anything contained in sub-rule (1), where the Tribunal considers it necessary for just decision of the case, it may order cross-examination of any deponent either through Information and Communication Technology (ICT) facilities like video conferencing or otherwise as may be decided by the Tribunal.

(3) Every affidavit to be filed before the Tribunal shall be in **Form No.7.**

16. Production of additional evidence before the Bench.

(1) The parties to the proceedings shall not be entitled to produce before the Bench additional evidence, either oral or documentary, which was in the possession or knowledge but was not produced before the Inspector (s), appointed by the Central Government for the purpose of investigating the affairs of the concerned company (s), during investigation under Chapter XIV of the Act, but if the Bench requires any document to be produced or any witness to be examined or any affidavit to be filed to enable it to pass orders or for any other substantial cause, or if the Inspector (s) so appointed for the said purpose has not given sufficient opportunity to the party to adduce evidence, the Bench, for reasons to be recorded, may allow such document to be produced or witness to be examined or affidavit to be filed or may allow such evidence to be adduced.

(2) Such document may be produced or such witness examined or such evidence adduced either before the Bench or before such authority as the Bench may direct.

(3) If the document is directed to be produced or witness examined or evidence adduced before any authority, he or she shall comply with the direction of the Bench and after compliance send the document, the record of the deposition of the witness or the record of the evidence adduced, to the Bench.

(4) Additional evidence/document shall be made available by the Bench to the parties to the proceedings other than the party adducing the evidence and they may be afforded an opportunity to rebut the contents of the said additional evidence.

17. Filing of Reply and other Documents by the Respondents:

(1) Each respondent may file his reply to the petition or the application and copies of the documents with the registry as specified by the Tribunal. A copy of the reply or the application and the copies of other documents shall be forthwith served on the applicant by the respondent.

(2) In reply filed under sub-rule (1), the respondent shall specifically admit, deny or explain the facts stated by the applicant in his petition or application and state such additional facts as may be found necessary in his reply.

(3) When the respondent admits the facts stated in the petition or application, the Tribunal may make order in this regard".

18. Filing of Rejoinder:

The applicant intending to file rejoinder to the written reply filed by the respondent may do so forthwith with a copy to respondent.

19. Power of the Bench to call for further information/evidence.

(1) The Bench may, before passing orders on the petition, require the parties or any one or more of them, to produce such further documentary or other evidence as it may consider necessary -

(a) for the purpose of satisfying itself as to the truth of the allegations made in the petition; or

(b) for ascertaining any information which, in the opinion of the Bench, is necessary for the purpose of enabling it to pass orders on the petition.

(2) Without prejudice to sub-rule (1), the Bench may, for the purpose of inquiry or investigation, as the case may be, admit such documentary and other mode of recordings in electronic form including e-mails, books of accounts, book or paper, communications, statements, contracts, electronic certificates and such other similar mode of transactions as may legally be permitted to take into account of those as admissible as evidence under the relevant Acts.

(3) Where any party preferring / contesting a petition of oppression and mismanagement raises the issue of forgery or fabrication of any statutory records, then it can move an application for forensic examination. The Bench hearing the matter may send the disputed records for opinion of Central Forensic Science Laboratory at the cost of the party alleging fabrication of records but if this request is refused, the Bench will give reasons thereof.

20. Plural remedies

A petition or an application shall be based upon a single cause of action and may seek one or more reliefs provided that they are consequential to one another.

21. Admission and Denial of Documents:

The Tribunal may, before framing issues ascertain from parties or their authorised representatives whether they admit or deny documents accompanying the petition or the application or reply, if any, and shall record such admission and denial.

22. Marking of Documents:

The documents filed by the applicant shall be marked as "A' series and the documents filed by the respondent shall be marked as "R" series and the Tribunal exhibits shall be marked as 'T' series".

23. Summary dismissal of petition or application:

The Tribunal may, after considering the petition or application, summarily dismiss the application, if for reasons to be recorded, the Tribunal is of opinion that there are not sufficient grounds for proceeding therewith.

24. Hearing of petition or applications:

(1) The Tribunal shall notify to the parties the date and place of hearing of the petition or application in such manner as the President or a Member may, by general or special order, direct.

(2) Where at any stage prior to the hearing of the petition or application the applicant desires to withdraw his petition or application, he shall make an application to that effect to the Tribunal, and the Tribunal on hearing the applicant and if necessary the others arrayed as opposite parties in the petition or the application or otherwise may permit such withdrawal upon imposing such costs as it may deem fit and proper for the Tribunal in the interest of the justice.

25. Rights of a party to appear before the Bench.

(1) Every party may appear before a Bench in person or through an authorized representative.

(2) A party may, in writing, authorize an Advocate or a Company Secretary in practice or a Chartered Accountant in practice or Cost Accountant in practice, to function as a representative of such party. A company may appoint and authorise its directors or company secretary or CFO or CEO or manager all under the Act to appear, in its behalf, in any proceedings before the Bench. The Central Government, the Regional Director or the Registrar of Companies or Official Liquidator may authorise an officer or an Advocate. The Company Liquidator shall make his appearance in person.

(3) The officer authorized by the Central Government or the Regional Director or the Registrar of Companies or the Official Liquidator should be an officer not below the rank of officers of Senior Time Scale. In the case of the Company Secretary in practice or chartered accountants in practice or cost accountant in practice should have post qualification experience of five years.

(4) The authorized representative except officer'(s) of Central Government or the Regional Director or the Registrar of Companies shall not be allowed to represent the party unless such power of attorney or Vakalatnama or memorandum of appearances as mentioned in rule 69 is filed before the Bench before commencement of the proceedings.

(5) During any proceedings before the Tribunal, it may for the purpose of its knowledge, may call upon the Registrar of Companies to submit information on the affairs of the company only on the basis of information available in the MCA 21 portal. Reasons for such directions shall be recorded in writing.

26. Oath to the witness:

The Tribunal Officer or the Tribunal Commissioner as appointed by the Tribunal, as the case may be, shall administer the following oath to a witness:-

"I do swear in the name of God that what I shall state shall be truth and nothing but the truth."

27. Action on Application for Applicant's Default:

(1) Where on the date fixed for hearing of the petition or application or on any other date to which such hearing may be adjourned, the applicant does not appear when the petition or the application is called for hearing, the Tribunal may, in its discretion, either dismiss the application for default or hear and decide it on merit.

(2) Where the petition or application has been dismissed for default and the applicant files an application within thirty days from the date of dismissal and satisfies the Tribunal that there was sufficient cause for his non-appearance when the petition or the application was called for hearing, the Tribunal shall make an order setting aside the order dismissing the petition or the application and restore the same:

Provided that where the case was disposed of on merits the decision shall not be re-opened except by way of review.

28. Ex-parte Hearing and Disposal of petition or Application

(1) Where on the date fixed for hearing the petition or application or on any other date to which such hearing may be adjourned, the applicant appears and the respondent does not appear when the petition or the application is called for hearing, the Tribunal may, in its discretion adjourn the hearing or hear and decide the petition or the application *ex-parte* in exercise of the power***s*** conferred on it in clause (f) of sub-section 2 of section 424 of the Act.

(2) Where a petition or an application has been heard ex-parte against a respondent or respondents, such respondent or respondents may apply to the Tribunal for an order to set it aside and if such respondent or respondents satisfy the Tribunal that the notice was duly served, or that he or they were prevented by any sufficient cause from appearing (when the petition or the application was called) for hearing, the Tribunal may make an order setting aside the ex-parte hearing as against him or them upon such terms as it thinks fit in exercise of powers conferred on it under clause (g) of sub-section (2) of section 424 of the Act, and shall appoint a day for proceeding with the petition or application :

Provided that where the ex-parte hearing of the petition or application is of such nature that it cannot be set aside as against one respondent only, it may be set aside as against all or any of the other respondents also.

29. Procedure and Powers of Tribunal:

(1) The Tribunal shall have, for the purposes of discharging its functions under this Act, the same powers as are vested in a Civil court under the Code of Civil Procedure, 1908, while trying suit, in terms of section 424 of the Act, in respect of the following matters, namely :

(a) summoning and enforcing the attendance of any person and examining him on oath ;

(b) requiring the discovery and production of document;

(c) receiving evidence on affidavits;

(d) subject to the provisions of *sections* 123 and 124 of the Indian Evidence Act 1872, requisitioning any public record or document or copy of such record or document from any office;

(e) issuing commissions for the examination of witnesses or documents;

(f) dismissing a representation for default or deciding it *ex parte;*

(g) setting aside any order of dismissal of any representation for default or any order passed by it ex parte; and

(h) any other matter which may be prescribed by the Central Government.

(2). For the purposes of clause (h) of sub-section (2) of section 424 of the Act, the Tribunal shall for the purpose of discharging its functions under the Act exercise the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 in respect of the following matters:-

(a) granting stay or order status quo;
(b) ordering injunction or cease and desist;
(c) appointing commissioner (s) for the purpose under the Act;
(d) exercising limited power to review its decision to the extent of correcting clerical or arithmetical mistakes or any accidental slip or omission as provided in rule 189 of these rules;
(e) passing such order or order***s*** as it may deem fit and proper in the interest of justice.

30. Power to Pass Order:

The Tribunal may, after giving the parties to any proceeding before it a reasonable opportunity of being heard pass such orders therein as it thinks fit as provided in section 424 of the Act. The Tribunal shall send a copy of every order passed to the parties concerned.

31. Power of Contempt:

The Tribunal shall have the same jurisdiction, powers and authority in respect of contempt of themselves as a High Court has and may exercise, for the purpose, the powers under the provisions of the Contempt of Courts Act, 1971 which shall have the affect subject to the modifications as prescribed in section 425 of the Act.

32. Power to Regulate the Procedure:

In exercise of the powers conferred on it under sub-section (1) of section 424 of the Act, the Tribunal may regulate its own procedure for the purpose of discharging its functions under the Act.

33. Summoning of Witnesses and Method of Recording Evidence-

(1) If a petition or an application is presented by any party to the proceedings for summoning of witnesses, the Tribunal shall issue summons for the appearance of such witnesses unless it considers that their appearance is not necessary for the just decision of the case.

(2) The Tribunal shall make a brief memorandum of the substance of the evidence of every witness as the examination of the witness proceeds and such memorandum shall form part of the record ;

Provided that if the Tribunal is prevented from making such memorandum, it shall record the reasons of its inability to do so and shall cause such

memorandum to be made in writing from its dictation and shall sign the same, and such memorandum shall form part of the record.

(3) Where summons are issued by the Tribunal under sub-rule (1) to any witness to give evidence or to produce any document, the person so summoned shall be entitled to such travelling and daily allowance sufficient to defray the travelling and other expenses as may be determined by the Registrar.

34. Documents not to form part of records

Unless duly permitted by the Tribunal, the following documents shall not form part of the records of the case-

(a) written statement or reply filed after the expiry of time granted for the purpose;
(b) rejoinder filed without leave of the Tribunal or after the expiry of time granted;
(c) additional pleading filed in any manner whatsoever without leave of the Tribunal or filed after expiry of time granted; and
(d) documents not submitted in time or not tendered into evidence.

35. Power to Issue Commission:

Any Bench of the Tribunal may issue a commission for the examination or interrogatories or otherwise of any person who is unable to attend the Tribunal for any justifiable reason or for any other purpose as may be required for the disposal of the case.

36. Procedure in Connected Cases:

(1) Where two or more petitions or applications pending before a Tribunal arise out of the same facts and any issue involved is common to two or more such petitions

or applications, such petitions or applications may so far as the evidence bearing on such issue is concerned, be heard simultaneously and a common order may be passed.

(2) Where action is taken under sub-rule (1), the evidence bearing on the common issue or issues shall be recorded on the record of one petition or application and the Tribunal shall certify under its hand on the records of any such other petition or application, the extent to which evidence so recorded applies to such other case and the fact that the parties to such other case had the opportunity of being present, and, if they were present for cross-examining the witnesses.

37. Calendar of Transferred Cases:

Each Bench shall draw up a calendar for the hearing of transferred cases in such manner as the President may, by general or special order transfer such cases to its Benches with a direction to hear and decide the cases according to the calendar.

38. Substitution of Legal Representatives-

(1) Where a party to a proceeding pending before a Bench dies or is adjudged insolvent or, in the case of a company, being wound up, the proceeding shall not abate and may be continued by or against the executor, administrator or other legal representative of the parties or by or against the assignee, receiver or liquidator, as the case may be.

(2) In the case of death of a party during the pendency of the proceedings before Tribunal, the legal representative (s) of the deceased party may apply within ninety days of the date of such death for being brought on record.

(3) Where no petition or application is received from the legal representatives within the period specified in sub-rule (2), the proceedings shall abate:

Provided that for good and sufficient reasons shown, the Tribunal may allow substitution of the legal representatives of the deceased at any time before disposing the appeal on merits.

39. Assessors or Valuers-

(1) In any enquiry into a claim, the Tribunal may call in the aid of assessors, not exceeding two in number, who possess any technical or special knowledge with respect to any matter before the Tribunal for the purpose of assisting the Tribunal.

(2) An assessor or valuer shall perform such functions as the Tribunal may direct.

(3) The remuneration, if any, to be paid to an assessor or valuer shall in every case be determined by the Tribunal and be paid by it in the manner as may be specified by the Tribunal.

40. Pleadings before the Tribunal

No pleadings, subsequent to the reply, shall be presented except by the leave of the Tribunal upon such terms as the Tribunal may think fit.

41. Adjournment of Hearing:

If the Tribunal finds that a petition or an application cannot be taken up for hearing on a given date at the request of either of the parties or both or on its own, it shall record the reasons which necessitate the adjournment and also inform the parties present of the date of adjourned hearing in the open court:

Provided that no such adjournment shall be granted more than three times to a party during the proceedings before the Tribunal except in circumstances which are beyond the control of the concerned party:

Provided further that all the documents shall be filed by the parties along with pleadings and no adjournment shall be granted for filing documents at a later stage except in circumstances which are beyond the control of the concerned party, but before concluding the arguments.

42. Costs:

The Tribunal may, in its discretion, pass such order (s) in respect of costs incidental to any proceedings before it, as it may deem fit.

43. Decision of the Tribunal:

The Tribunal shall decide every petition or application as expeditiously as possible on perusal of documents, affidavits and other evidence, if any, and after hearing such oral arguments as may be advanced with reference to section 422 of the Act.

44. Order to be passed and signed-

(1) The Tribunal, after hearing the applicant and respondent, shall make and pronounce an order either at once or, as soon as thereafter as may be practicable but not later than thirty days from the final hearing.

(2) An order made by the Tribunal shall be executable by the Tribunal as a decree of a civil court and the provisions of the Code of Civil Procedure, 1908, so far as may be, shall apply as they apply in respect of decree of a civil court as provided in terms of sub-section (3) of section 424 of the Act.

(3) Every order of the Tribunal shall be in writing and shall be signed and dated by the President or Member or Members constituting the Bench which heard the case and pronounced the order.

(4) Orders shall be pronounced in the sitting of the Tribunal by the President or in case of the temporary absence of the President, the Member so authorized.

(5) The orders of the Tribunal, as are deemed fit for publication in any authoritative report or the press may be released for such publication on such terms and conditions as the President may lay down.

(6) A certified copy of every order passed by the Tribunal shall be communicated to the parties.

(7) The Tribunal may make such orders or give such directions as may be necessary or expedient to give effect to its orders or to prevent abuse of its process or to secure the ends of justice.

(8) Any order made by the Tribunal may be enforced by it in the same manner as if it were a decree made by a court in a suit pending therein, and it shall be lawful for the Tribunal to send for execution of its orders to the court within the local limits of whose jurisdiction as per sub-section (3) of section 424 of the Act:-

(a) In the case of an order against a company, the registered office of the company is situate; or

(b) In the case of an order against any other person, the person concerned voluntarily resides or carries on business or personally works for gain.

(9) Notwithstanding anything stated in these rules, the Tribunal may transmit order made by it to any court for enforcement on application made by either of the parties to the order or *suo motu* subject to sub-rule 8 (a) and (b) above.

(10) Every order or judgement or notice shall bear the seal of the Tribunal.

45. Application for Execution:

For execution of order passed by the Tribunal, the holder of an order shall make an application to the Tribunal in **Form No. 8** - as provided in **Annexure C**.

46. Issue of Process of Execution-

(1) On receipt of an application under rule 44, the Tribunal shall issue a process for execution of its order in such Form as provided in the Code of Civil Procedure, 1908.

(2) The Tribunal shall consider objection, if any, raised by the respondent and make such order as it may deem fit and shall issue attachment or recovery warrant in such Form as provided in the Code of Civil Procedure, 1908, as the case may be.

47. Review of decision-

(1) The Tribunal may at any time within two years from the date of the order, with a view to rectifying any mistake apparent from the record amend any order passed by it, and shall make such amendment *suo motu, or* if the mistake is brought to its notice by the parties in terms of sub-section (2) of section 420:

Provided that no such amendment shall be made in respect of any order against which an appeal has been preferred under the Act.

(2) Any person considering himself aggrieved by any order of the Tribunal from which no appeal is allowed or from which appeal is allowed, but has not been preferred and who on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the order made against him, may apply in **Form No. 9** of these rules for review of a final order not being an interlocutory order, to the Tribunal.

(3) Where it appears to the Tribunal that there is not sufficient ground for a review, it shall reject the petition or application.

(4) Where Tribunal is of the opinion that the petition or application for review should be granted, it shall grant the same:

Provided that no such petition or application shall be granted without previous notice to the opposite party to enable him to appear and be heard in support of the order, a review of which is applied for.

48. Compliance of orders of the Bench.

Every Bench shall have power to direct the parties concerned to file an affidavit of compliance of its order or such other documents in the manner specified in its order.

49. Effect of non-compliance.

Failure to comply with any requirement of these rules shall not invalidate any proceeding, merely by reason of such failure, unless the Bench is of the view that such failure has resulted in miscarriage of justice.

50. Procedure for imposition of penalty under the Act.

(1) Notwithstanding anything to the contrary contained in any rules or regulations framed under the Act, no order or direction imposing a penalty under the Act shall be made unless the person or the company or a party to the proceeding, during proceedings of the Bench, has been given a show cause notice and reasonable opportunity to represent his or her or its case before the Bench or any officer authorized in this behalf.

(2) In case the Bench decides to issue show cause notice to any person or company or a party to the proceedings, as the case may be, under sub-rule (1), the Registrar/Registry shall issue a show cause notice giving not less than fifteen days

asking for submission of the explanation in writing within the period stipulated in the notice.

(3) The Bench shall, on receipt of the explanation, and after oral hearing if granted, proceed to decide the matter of imposition of penalty on the facts and circumstances of the case.

51. Empanelment of special authorized representatives by the Tribunal.

(1) The Tribunal may draw up a panel of legal practitioners or company secretaries in practice or chartered accountant in practice or cost accountant in practice to assist in proceedings before the Tribunal or Appellate Tribunal.
(2) The President may call upon any of the persons from panel under sub-rule (1) for assistance in the proceedings before the Bench, if so required.
(3) The remuneration payable and other allowances and compensation admissible to such persons shall be specified in consultation with the Tribunal.

52. Publication of orders-

Any order of the Tribunal deemed by it to be fit for publication in any authoritative report either in physical or electronic form or both or other media may be released for such publication on such terms and conditions as the President or Member concerned may specify by general or special order.

53. Certified copy of the order and inspection of documents or records-

(1) If the applicant or the respondent to any proceeding requires a copy of any order passed by the Tribunal, the same shall be supplied to him on payment of fees as specified in **Annexure -B** within four working days from the date of the receipt of

the petition or application for the said purpose and on urgent basis within two working days from the receipt of the petition or application for the said purpose.

(2) The parties to any case or their authorized representative may be allowed to inspect the record of the case on making a petition or an application in writing to the Registrar and on payment of fee as specified in **Annexure -B**.

(3) For the purpose of inspection of any physical documents or records or getting clarification of any query relevant thereto from the Registry, by the parties to the proceedings or their respective authorized representatives or such other person shall be allowed on payment of fee as may be specified in **Annexure-B** during the working hours of the Registry as may be decided by the President.

54. Orders or directions by the Tribunal nd inherent powers of Tribunal-

The Tribunal may pass such orders or give such directions as may be necessary or expedient to give effect to its orders or to prevent abuse of its process or to secure the ends of Justice. Nothing in these rules shall be deemed to limit or otherwise affect the inherent powers of the Tribunal to give such directions or pass such oders as may be necessary for the ends of justice or to prevent abuse of the process of the Tribunal.

55. Registration of Authorized Representative's clerks-

(1) No clerk employed by an authorised representative shall act as such before the Tribunal or be permitted to have access to the records and obtain copies of the orders of a Bench of the Tribunal in which the Authorised Representative ordinarily appears, unless his name is entered in the Register of Clerks maintained by the said Bench. Such clerk shall be known as a "Registered Clerk".

(2) An authorised representative desirous of registering his clerk shall make a petition or an application to the Registrar in **Form 10**. On such application being allowed by the Registrar, his name shall be entered in the Register of clerks.

(3) An identity card shall be issued to a Registered Clerk of the Authorised Representative on payment of fee as specified under **Annexure –B** by way of Indian postal order or demand draft drawn in favour of the Registrar.

56. Working Hours of the Tribunal:

Except on Saturdays, Sundays and other public holidays, the office of the Tribunal shall, subject to any order made by the President, remain open from 9-30 a.m. to 6-00 p.m.

57. Sitting hours of the Tribunal:

The sitting hours of the Tribunal shall ordinarily be from 10-30 a.m. to 1-15 p.m. and 2-15 p.m. to 4-30 p.m. subject to any general or special order made by the President or Members or any Member concerned with the prior approval of the President.

58. Seal and emblem:

The official seal and the emblem of the Tribunal shall be such as the Central Government may specify.

59. Sittings of the Tribunal outside the Headquarters:

The Tribunal and any of the Benches may hold its sittings at its Headquarters or at any other place as it may find convenient for better transaction or conduct of the business as may be decided by the Tribunal.

60. Headquarters of the Tribunal:

The Tribunal shall have its Headquarters at New Delhi.

61. Preservation of Record:

All necessary documents and records relating to petitions or applications dealt with by the Tribunal shall be stored or maintained as provided in these rules and other physical records kept in a record room shall be preserved for a period of three years after the passing of the final order.

62. Inherent powers of the Tribunal:

Nothing in these rules shall be deemed to limit or otherwise affect the inherent powers of the Tribunal to make such orders as may be necessary for meeting the ends of justice or to prevent abuse of the process of the Tribunal.

63. Monthly progress report of Tribunal:

The Tribunal shall furnish every month to the Central Government the information with regard to institution, disposal and pendency of applications or petitions and other information relating to the functioning of the Tribunal and its Benches.

64. Maintenance of Order Sheets:

The Registrar shall attach to every petition or application an order sheet in the e-form or in physical mode as may be prepared to suit to the proceedings of the Tribunal.

65. Maintenance of Tribunal Diary:

The Tribunal Officer shall maintain a Tribunal diary in format specified by the Registry for recording the proceedings of the Tribunal for each working day with respect to all petitions or applications listed in the daily cause list either manually or electronically as provided hereto.

66. Preparation and publication of daily cause list:

The Tribunal Officer shall on each working day prepare for the next working day, the cause list in the prescribed format as prepared by the Registry and such format

should uniformly be followed by the respective registries of the Benches and such cause list shall also be displayed at conspicuous place in the premises of the Tribunal either by affixing a copy of the same on the Notice Board of the Tribunal and by making publication in the website of the Tribunal forthwith.

67. Retention, Preservation and Destruction of Records:

(1) The Record Keeper or any other officer so designated shall be responsible for the records consigned to the Record Room. He shall scrutinize the records received by him within three days and prepare an index.
(2) On the expiry of the period for preservation of the records specified under rule 61, the Registrar shall weed out the record.

68. Dress for President and Members and for the Authorised Representatives and for the parties in person:

(1). For President and Members: The dress of the President shall be white or striped or black pant with black coat over white shirt and band or buttoned- up black coat and band. The dress for the other members of the Tribunal shall be white or striped or black trousers with black coat over white shirt and black tie or buttoned coat. In the case of a female President or a Member, the dress shall be black coat over a white saree.

(2). For Authorized Representatives: Every authorized representative as provided in section 432 of the Act, other than a relative or regular employee of the party shall appear before the Tribunal in his professional dress if any, and if there is no such dress, a male, in a suit or buttoned–up coat over a pant or national dress that is a long buttoned-up coat on dhoti or churidar pyjama, and a female, in a coat over white or any other sober coloured saree or in any other sober dress.

(3) For Parties in Person : Parties appearing in person before the Tribunal shall be properly dressed.

69. Memorandum of Appearance:

The Authorized Representatives shall make an appearance through the filing of Memorandum of Appearance or a power of attorney in **Form No. 12** representing the respective parties to the proceedings. In case of legal practioner/ advocate, he may make appearance by filing Vakalatnama.

70. Applicability of General Procedure under this Part:

The above rules under General Procedure shall be in addition to the rules provided specifically under Parts herein in respect of the various categories of matters arising before the Tribunal

71. Registers of petitions and applications.

(1) There shall be kept in the office of the Bench two separate registers, one for the petitions and other for the applications filed before the Bench.

(2) In every register, referred to in sub-rule (1), there shall be entered the following particulars, namely -

(a) the serial number of the petition or application and in addition, in the case of an application, the serial number of the petition to which it relates;
(b) the date of presentation or receipt of the petition or application;
(c) the name of the company to which the matter relates;
(d) the name and address of the petitioner or applicant;
(e) the names and addresses of the other parties to the petition or application and the names and addresses of the authorised representatives of the parties, if any
(f) the provision of law under which the petition or application is made;
(g) the nature of the relief (s) which have been sought;
(h) the date of disposal of the petition or application;
(i) the nature of the order made by the Bench;

(j) the date when the formal order is drawn up and communicated to the parties;
(k) remarks, if any.

(3) Separate registers shall be opened for each year and each register of petitions shall be preserved permanently and each register of application shall be preserved for a period of eight years.

72. Fees.

(1) In respect of the several matters mentioned in Annexure D, there shall be paid fees as prescribed in Annexure B of these rules:
Provided that no fee shall be payable or shall be liable to be collected on a petition or application filed or reference etc made by the Registrar of Companies, Regional Director or by any officer on behalf of the Central Government:

(2) In respect of every interlocutory application there shall be paid fees as prescribed in Annexure B of these rules:

Provided that no fee shall be payable or shall be liable to be collected on an application filed by the Registrar of Companies, Regional Director or by an officer on behalf of the Central Government.

(3) In respect of a petition or application filed or references made etc before the Principal Bench or the Bench of the Tribunal, fees payable under these rules shall be paid by means of a bank draft drawn in favour of the Pay and Accounts Officer, Ministry of Corporate Affairs, New Delhi/Kolkata/Chennai /Mumbai as the case may be or by electronic mode.

PART-III

E-filing of applications, petitions etc

73. Purpose

These rules govern the electronic filing and service of Tribunal documents, by any method other than fax filing and they are made in consonance with the provisions

provided in the Act regarding electronic filing so as to supplement thereto to enable the filer to upload documents electronically through the Electronic filing service providers as may be notified by the Central Government.

74. Effect on Existing Acts and Rules

Notwithstanding anything contained in any other Act for the time being in force concerning the filing of electronic documents, these rules shall be in addition to the provisions of the Act, and Information Technology Act, 2000 and such other analogous rules made thereunder but not in derogation thereto. In case of any conflict or contrast with any other provisions of the Act or other Acts or respective rules as prescribed for electronic filing, then these rules shall prevail.

75. Electronic Filing Wholly Compulsory or Mandatory unless Ordered by Tribunal

(a) Except as provided by sub-rule (b) below, the electronic filing and serving of Tribunal documents is mandatory and compulsory.

(b) Upon the motion of a party and for cause shown, the Tribunal may order the parties in a particular case to manually file and serve Tribunal documents, which are otherwise permitted to be electronically filed in a manner as may be directed by the Tribunal.

(c) The rules made under this Part for electronic filing shall come into force on the date as may be notified by the Central Government in the Official Gazette.

76. Power to Exempt from Electronic Filing of Documents:

(1) Notwithstanding anything contained in these rules, the Central Government may grant exemption from filing documents electronically either wholly or partly or put

on hold the implementation of the rules of this Part completely and such other related provisions in these rules until a period or thereafter until such extended period as may be specified by way of notification in the Official Gazette.

(2) Save as otherwise provided in these rules, in case such exemption has been granted, the documents required to be filed electronically shall manually be filed and wherever appearing, the relevant rules stipulating electronic or e-filing in these rules may be understood for manual filing only.

77. Registry:

This part of these rules applies only to the filing of documents with the Registry. This part of these rules do not apply to the filing of documents directly with a Member or Members of the Tribunal if the respective persons or entity has been directed to file any document before the Bench directly.

78. Documents Containing Signatures

(a) A document that is required to be verified, notarized, acknowledged, sworn to, or made under oath shall be electronically filed only as a scanned image.

(b) Where a filer has electronically filed a scanned image under this rule, the Tribunal may require the filer to properly file the document in a physical form with the Registry. The Registry may allow such documents for the inspection.

79. "DEDICATED PORTAL ONLINE"

(a) "Dedicated Portal Online" is a Portal as defined in sub-rule (16) of rule 2 through which all the parties or Central or State Government agencies and local government's bodies may electronically send and receive documents to or from the Tribunal and make required payments.

(b) To electronically file documents, filers must follow registration and such procedures as outlined by "Dedicated Portal" or otherwise as prescribed by the Central Government.

(c) Filers do not electronically file documents directly with the Registry. Rather, filers indirectly file a document with the Registry by electronically transmitting the document to "Dedicated Portal Online" which then electronically transmits the document to the Registry. A filer filing or serving a document must have a valid account with Dedicated Portal Online.

(d) Consistent with standards promulgated by the Central Government in coordination with such other authority or committee on Information Technology, the Dedicated Portal Online, will specify the permissible formats for documents that will be electronically filed and electronically served.

(e) Filers who electronically file documents will pay the filing fees to the Registry indirectly through the "Dedicated Portal Online" by a method set forth by "Dedicated Portal Online."

80. Signatures

(a) Upon completion of the initial registration procedures, each filer will be issued a confidential and unique electronic identifier. Each filer must use his or her identifier in order to electronically file documents. Use of the identifier to electronically file documents constitutes a "digital signature" on the particular document.

(b) The attachment of a digital signature on an electronically filed document is deemed to constitute a signature on the document for purposes of signature requirements imposed by relevant provisions of the Act, or any other law. The person whose name appears first in the signature block of an initial pleading is deemed to be the attorney in charge for the purposes of fulfilling all the requirements provided under the Act, or "Dedicated Portal" online or such other Machine Mode Project as designed, developed and maintained by the Ministry of Corporate Affairs or the Central Government for the purpose under these rules or Information Technology Act, 2000 or such other amended Acts or relevant rules as provided from time to time, unless otherwise designated. The digital signature on any document filed is deemed to be the signature of the Attorney or the Authorised Representative, whose name appears first in the signature block of the document for the said purpose.

(c) A digital signature on an electronically-filed document is deemed to constitute a signature by the filer for the purpose of authorizing the payment of document filing fees.

81. Time Document Filing

(a) A filer may electronically transmit a document to "Dedicated Portal Online" 24 hours in a day and every day of the year, except during brief periods of Central Government approved scheduled maintenance which will occur on any fixed day as informed at the respective website.

(b) Upon sending an electronically filed document with the Registry by a filer, the filer is deemed to have delivered the document to the Registry and, subject to sub rule (e), the document is deemed to be filed.

(c) As soon as possible but not later than three working days after receiving a document from "Dedicated Portal Online", the Registry shall examine the document for acceptance or if not, to decide otherwise.

(d) If the document is accepted for filing, the Registry shall note the date and time of filing which, with the exception of sub-rule (e) below, shall be the date and time that the filer transmitted the document. The Registry shall inform through "Dedicated Portal Online" its action within 3 working days.

(e) Except in cases of injunction, attachment, garnishment, sequestration, or distress proceedings, documents that serve to commence the proceedings will not be deemed to have been filed on any holiday when the document is electronically transmitted to the ***"Dedicated Portal Online"*** or the Registry on holiday. Such documents will be deemed to have been filed on the succeeding working day of the Tribunal.

82. Filing Deadlines Not Altered

The electronic filing of a document does not alter any filing deadlines.

83. Multiple Documents

(a) Except as provided by sub-rule (b) below, a filer may include only one document in an electronic transmission to Dedicated Portal Online.

(b) A filer may electronically transmit a document to Dedicated Portal Online that includes another document as an attachment (e.g., a motion or a proceeding to which is attached a brief in support thereto)

84. Official Document

(a) The Registry's file for a particular case may contain a combination of electronically-filed documents and physically filed documents.

(b) The Registry may maintain and make available electronically-filed documents in any manner allowed by law.

85. E-mail Address Required

In addition to the information required in a pleading by the Act, or rules, a filer must provide a valid e-mail address on any electronically filed document.

86. Document Format

(a) Electronic Format or Electronically-filed documents must be computer-formatted document prepared in accordance with the EDGAR Filer Manual as specified by the Tribunal. Electronically-filed documents must also be formatted for printing on 8 ½-inch by 11-inch paper or in such manner as may be specified by the Tribunal.

(b) In addition to compliance with para (a), an electronically-filed pleading shall comply with band width etc as may be specified by Central Government from time to time for filing through the Dedicated Portal Online.

87. Electronic Service of Documents Permissible

(a) In addition to the methods of serving documents (other than the citation to be served upon the filing of a cause of action) set forth in the Act as well as in these rules, a filer may serve documents upon another party in the case by electronically transmitting the document to that party at the party's provided email address. Service in such a manner is known as 'Electronic service," and is permissible in the circumstances unless the Tribunal has ordered the parties to serve the documents otherwise.

(b) By virtue of electronically filing a document or serving a document or by agreeing to accept service, a filer additionally agrees to provide information regarding any change in his or her e-mail address to Dedicated Portal Online, the Registry, and all parties in the case.

(c) A party who electronically files a document may not be necessarily required to electronically serve documents upon other parties unless the Tribunal has ordered the parties to electronically serve documents.

(d) A filer may electronically serve a document in instances where the document is physically filed as well as in instances where the document is electronically filed.

88. Completion of Service and Date of Service

(a) Electronic service shall be complete upon transmission of the document by the filer to the party at the party's e-mail address.

(b) Except as provided by sub-rule (c) below, the date of service shall be the date on which the electronic service is complete.

(c) When electronic service is complete after office hours (recipient's time), then the date of service shall be deemed to be the next day which is not a public holiday.

89. Time for Action after service

Whenever a party has the right or is required to do some act within a prescribed period of time after service of a document upon the party and that document is electronically served, then three days shall be added to the prescribed period of time unless the Tribunal orders otherwise.

90. Certification of Service

(a) Documents to be electronically served upon another party shall be served before the time or at the same time that the document is filed.

(b) A filer who electronically serves a document upon another party shall make a written certification of such service that shall accompany the document when

that document is filed. The written certification shall include, in addition to any other requirements imposed by the Act, or in these rules, the following:

(i) the filer's e-mail address or telecopier (facsimile machine) number;
(ii) the recipient's e-mail address;
(iii) the date and time of electronic service; and
(iv) a statement that the document was electronically served and that the electronic transmission was reported as complete.

91. Tribunals Authorized to Make Electronic Orders

(a) The President or a member or members or any Presiding Officer, as the case may be in an instance, may electronically sign an order by applying his or her digitized signature to the order.

(b) Upon electronically signing an order as stated in para (a) above, the President or a member or one of the members or any Presiding Officer who has or have heard the case and passed the order, shall electronically forward the order to the Registry who shall treat the electronic order as the official copy of the order. The Registry shall print the electronic order and treat the printed order as the official copy of the order.

(c) The Registry may electronically scan a physical form of the Tribunal order. The scanned Tribunal order may then serve as the official copy of the Tribunal order. The Registry is not required to electronically scan physical copies of the orders of the Tribunal in order to create official electronic Tribunal orders. Electronic scanning of physical copies of the Tribunal orders is at the option of the Registry.

92. Viewing of Electronically-filed Documents

(a) The Registry shall ensure that all the records of the Tribunal, except those made confidential or privileged by law or statute, may be viewed in same format by all persons free of cost or for such fee as may be specified by the Tribunal.

(b) Independent of the Dedicated Portal Online system and the requirement of viewing access described in sub-rule (a), the Registry may choose to provide for both filers and the general public to electronically view documents or Tribunal orders that have been electronically filed or scanned. Where such provision has been made, persons may electronically view documents or Tribunal orders that have been electronically filed or scanned subject to such fee as may be prescribed by the Central Government and such collection of fee.

(c) Nothing in this rule allows for the viewing of documents or Tribunal orders, in any form, that are legally confidential or otherwise restricted by relevant Act or order.

PART IV

President and Members' salaries & Allowances and other Terms and Conditions of Service

93. Salary, Allowances, and other Terms and Conditions of Service of President and Members:

The Salary, Allowances, and other Terms and Conditions of Service of President and Members shall be in the manner as may be prescribed by the Central Government in exercise of the power***s*** provided under section 414 of the Act.

94. Powers of the President:

In addition to the General Powers provided in the Act, and in these rules elsewhere, the President shall exercise the following powers:

a. Preside over the consideration of cases by the Tribunal;

b. Direct the Registry of the Tribunal in the performance of its functions;

c. Prepare an annual report on the activities of the Tribunal;

d. Perform the functions entrusted to the President under these Rules; and

e. Such other powers as may be relevant to carry out his duties as Head of the Tribunal while exercising the general superintendence and control over the administrative functions of the Members , Registrar, Secretary and other staff of the Tribunal;

f. Transfer case(s) from one Bench to other Bench of the Tribunal when the circumstances so warrant.

PART V

Procedure relating to issuance of orders and disposal of cases

95. Matters relating to the Judgements or Orders of the Tribunal:

1. Once the final text of the judgement has been approved and adopted, the judgement shall be signed and dated by the President or the concerned

members or member and the Registrar and shall contain the names of the members who have taken part in decision;

2. Any member differing as to the grounds upon which the judgement was based or some of its conclusions, or dissenting from the judgement, may append a separate or dissenting opinion. In case the members who have heard the case are equally divided in passing the order or judgement, then the President shall constitute a Bench as referred in sub-section (5) of section 419 of the Act.

96. Amicus Curiae

The Tribunal may, at its discretion, permit any person or persons, including the professionals and professional bodies to render or to communicate views to the Tribunal as Amicus Curiae on any point or points or legal issues as the case may be as assigned to such Amicus Curiae. The Tribunal may permit an Amicus Curiae to have access to the pleadings of the parties. The Tribunal shall enable the parties to submit timely observations on an amicus brief. The Tribunal shall be at liberty to direct either of the parties or both the parties to the proceedings involving a point on which the opinion of the Amicus Curiae has been sought, to bear such expenses or fee as may be ordered by the Tribunal. The judgement and any appended opinions shall be transmitted to the parties and to *Amicus Curiae*.

97. Recusal

1. For the purpose of maintaining the high standards and integrity of the Tribunal, the President or a Member of the Tribunal shall recuse himself

   a. In cases involving persons with whom the President or the Member has a personal, familial or professional relationship;

b. In cases concerning which the President or the Member has previously been called upon in another capacity, including as advisor, representative, expert or witness ; or

c. If there exist other circumstances such as to make the President or the Member's participation seem inappropriate.

2. Any member recusing himself shall immediately inform the President of the Tribunal or in the case of the President, the next senior member thereto.

PART-VI

Functions of the Registry, Secretary and General Procedures

98. Appointment of Staff to the Registry:

In exercise of the powers provided in section 418 of the Act, the Central Government in consultation with the Tribunal shall provide the Tribunal the staff including the Registrar, Secretary and such other officers for the purpose of exercising the powers and discharging the functions of the Tribunal as the case may be.

99. Powers, Functions and Duties of the Registrar:

(1) In addition to the functions and duties as assigned to the Registry in Part II and elsewhere in these rules, the Registrar at the Principal Bench, and at other Benches, the officer so designated to function as Registrar shall have all the powers, functions and duties of the Registrar and the Registrar or such officer as designated as Registrar at the Benches shall be head of the Registry and the staff working in the Registry shall work under his general superintendence and control of the Registrar or such other officiating Registrar at the Benches. The Registrar shall work under the general superintendence and control of the President at the Principal Bench whereas the officiating Registrar at other benches shall work under the senior most member of the respective Benches of the Tribunal. Under the authority of the President, the Registrar of the Tribunal shall:

a. Receive and register petitions, appeals, applications, interlocutory and all other miscellaneous applications relating to such petitions appeals or applications, institution proceedings and related documentation of the case;

b. Be responsible for transmitting all documents and making all notifications required in connection with cases before the Tribunal and represent the matters pertaining to this Tribunal before any other forum as may be decided by the President;

c. Make for each case a dossier which shall record all actions taken in connection with the case, the dates thereof, and the dates on which any document or notification forming part of the procedure is received or dispatched from his office;

d. Attend hearings, meetings and deliberations of the Tribunal;

e. Keep the minutes of these hearings and meetings of the members as instructed by the President;

f. Upon the transmittal of a petition or an application to the Tribunal, unless the President decides otherwise, circulate within the Tribunal a notice summarizing the issues raised in the petition or application, without disclosing the name of the applicant, in order to inform the Members of the Tribunal of proceedings pending before the Tribunal; in respect of category matters as the President so instructs the Registrar;

g. Expeditiously perform the functions entrusted to him by the rules of procedure and carry out tasks as assigned by the President; and

h. Have the custody of the records of the Tribunal and shall perform such other functions as are assigned to him under these rules or from time to time by the President or the Member:

Provided that no record or document filed in any case or matter shall be allowed to be taken out of the custody of the Tribunal without the leave of the Tribunal.

(2) Without prejudice to the foregoing sub-rule (1), the Registrar shall have the following powers and duties, subject to the general or special order of the President or Member, namely:

(i) subject to the direction of the respective Benches, to fix the date of hearings and to issue notices therefore;

(ii) to direct any formal amendment of records;

(iii) to order to grant or transmit the documents to the parties of the proceedings;

(iv) to grant leave to inspect or view the records of the Tribunal;

(v) to dispose of all matters relating to the service of notices or other processes, applications for the issue of fresh notices and for extending the time for filing such applications and to grant time not exceeding 30 days for filing reply or rejoinder, if any, and to place the matter before the Bench for appropriate orders after the expiry of the aforesaid period;

(vi) to requisition for transfer of any records of such suit, claim or other legal proceeding as are transferred to the Tribunal from any Court, Board for Industrial and Financial Reconstruction or Appellate Authority for Industrial and Financial Reconstruction or Company Law Board or any other court or authority;

(vii) to receive and dispose of applications for substitution, except where the substitution would involve setting aside an order of abatement;

(viii) to receive and dispose of applications by parties for return of documents.

(ix) to supply to the Central Government the information in the prescribed Form;

(x) to dismiss the petition or application for default in case the applicant or his authorized representative does not appear before him on the date fixed for hearing of the case regarding the defects raised by the Registry;

(xi) to dismiss the petition or application in case the applicant fails to serve the opposite party with the notice; and

(xii) to restore the petition or application, if he is satisfied that there are sufficient reasons for non-appearance or for not serving the opposite party.

(3) The official seal shall be kept in the custody of the Registrar.

(4) Subject to any general or special direction by the President, the seal of the Tribunal shall not be affixed to any order, decree or judgement or summons or other process save under the authority in writing of the Registrar in case of physical form or in case of e-form as prescribed in Part III of these rules.

(5) The seal of the Tribunal shall not be affixed to any certified copy issued by the Tribunal save under the authority in writing of the Registrar.

(6) The Registrar of each Bench shall make out, every month a brief summary of the important decisions given by that bench during the previous month and send it to the Registrar of the Principal Bench who shall after suitable editing, circulate it to all the Benches of the Tribunal in the country and the Central Government for their information.

Presentation and scrutiny of petitions or applications:

100. In case of the scrutiny of the petitions or applications as provided in the rules in Part II and elsewhere in these rules, if any person is aggrieved with the decision of the Registrar or such other officer officiating as the Registrar of the Benches, an appeal against the order of the Registrar shall be made within 15 days of the making of such order to the President of the Principal Bench and at other places to the designated member of the Bench whose decision thereon shall be final.

Duties, Functions and Powers of the Secretary:

101. The post of the Secretary shall be at the Principal Bench, New Delhi. He shall discharge his duties, function and exercise his powers under the general superintendence and control of the President of the Tribunal. His main function is to co-ordinate with the Principal Bench and the Benches and act as a liaison officer between the Tribunal and the concerned Ministry having administrative jurisdiction over the Tribunal. He shall in addition to the work assigned to him by the President from time to time, have the following functions, duties and powers:

i. In charge of the long term projects and initiatives of the Tribunal;
ii. Supervise the Human Resources;
iii. Budgetary allocations and Financial Management;
iv. Tribunal operations;
v. Tribunal facilities and Administrative Services;
vi. Supervise the Public Grievances Mechanism;
vii. Coordinate with the Authorised Representatives and other Professionals;
viii. Information and Communication Technology (ICT) facilities;
ix. Communication services;
x. Public affairs and Public safety provisions in the Tribunal Premises;
xi. Supervision of Library and Research;
xii. Administrative Matters pertaining to the Benches and liaisoning between the President and the other Benches as well as providing support to the other benches under the directions of the President;
xiii. Attend and execute such directions given by the President and discharge such other functions and duties as may be assigned to him.
xiv. Attend the petitions or applications received for empanelment of the professionals including mediators/conciliators.

Part VII

102. Matters earlier dealt by the Company Law Board

(i) Notwithstanding any other provision of law or rule of Court or Tribunal to the contrary, an original civil action or case arising out of the Act, or any other corresponding provision of the Companies Act, 1956 or Reserve Bank of India Act, 1934 is filed or pending before the Company Law Board on the date on which the Tribunal is constituted, and the relevant provisions of the Act, dealing with the Tribunal have been given effect, or the Company Law Board has been abolished in pursuance of the provisions of the Act, then all the cases on such date pending with the Company Law Board or such Benches shall stand transferred to the respective benches of the Tribunal exercising respective territorial jurisdiction as if the case had been originally filed in the Tribunal or its Bench to which it is transferred on the date upon which it was actually filed in the Company Law Board or its Bench from which it was transferred:

Provided that the Tribunal shall consider any action taken under the said rules be deemed to have been taken or done under the corresponding provisions of these rules and the provisions of the Act, and shall thereupon continue the proceedings , except in a case where the order is reserved by the Company Law Board or its Bench. In such a case, the Tribunal shall reopen the matter and rehear the case as if the hearing had not taken place:

Provided further that the Tribunal is at liberty to call upon the parties in a case to produce further evidence or such other information or document or paper or adduce or record further depositions or evidence as may deem fit and proper in the interest of justice.

(ii) It shall be lawful for the President or such member (s) to whom the powers are so delegated, to provide that matters falling under all other sections of the Act, shall be dealt with by such benches consisting one or more members as may be constituted in exercising of such power as enshrined in the Act,

Provided that matters pending before the Principal Bench and Additional Principal Bench of the Company Law Board as on the date of constitution of Tribunal as stated *supra* shall continue and be disposed of by a bench consisting of not less than two members of the Tribunal having territorial jurisdiction

(iii) It shall be lawful for the Tribunal to dispose of any case transferred to it wherever the Tribunal decides that further continuance of such application or petition transferred before the Tribunal shall be a redundant exercise or an unnecessary proceeding on account of changes which have taken place in the Act either upon an application filed by either of the parties to the proceedings or *suo motu*.

(iv) A fresh petition or an application may also be filed in the prescribed form as provided in the Annexure-C corresponding to those provisions of the sections of Act, if both the parties thereto so consent unanimously with the approval of the Tribunal while withdrawing the proceedings as already continued before the Company Law Board and serve a copy of the petition on the parties thereto including the Ministry of Corporate Affairs, Regional Director, Registrar of Companies, Official Liquidator or Serious Fraud Investigation Office, as the case may be, as provided in the Act, in the manner as provided under Part II. Upon an application to the Tribunal if the permission is granted to file a petition or an application in physical form, then the same shall be filed accompanied with the documents or papers to be attached thereto as required to prove the case subject to the provisions of the Act, and rules hereto. The same procedure shall also apply to other parties to application or petition for filing reply or counter thereto.

(v) Notwithstanding the above and subject to section 434 of the Act, the Tribunal may prescribe the rules relating to numbering of cases and other

procedures to be followed in the case of transfer of such matters, proceedings or cases.

103. Matters earlier dealt by the District Court or High Court

(i) All proceedings under the Companies Act, 1956, including proceedings relating to arbitration, compromise, arrangements and reconstruction and winding up of companies, pending immediately before such date before any District Court or High Court, shall stand transferred to the Tribunal and the Tribunal may proceed to deal with such proceedings from the stage before their transfer.

(ii) Subject to section 434 of the Act, Tribunal may prescribe the rules relating to numbering of cases and other procedures to be followed in the case of transfer of such matters, proceedings or cases.

104. Matter earlier dealt by BIFR

Any appeal preferred to the Appellate Authority for Industrial and Financial Reconstruction or any reference made or inquiry pending to or before the Board of Industrial and Financial Reconstruction or any proceeding of whatever nature pending before the Appellate Authority for Industrial and Financial Reconstruction or the Board for Industrial and Financial Reconstruction under the Sick Industrial Companies (Special Provisions) Act, 1985 immediately before the commencement of this Act shall stand abated:

Provided that a company in respect of which such appeal or reference or inquiry stands abated under this clause may make a reference to the Tribunal under this Act within one hundred and eighty days from the commencement of this Act in accordance with the provisions of this Act:

Provided further that no fees shall be payable for making such reference under this Act by a company whose appeal or reference or inquiry stands abated under this clause.

105. Petition or Application under sub-section (2) of section 45QA of the Reserve Bank of India Act, 1934 (2 of 1934):

(i) Provisions of these rules shall apply, *mutatis mutandis*, to the application or petition made under sub-section (2) of section 45QA of the Reserve Bank of India Act, 1934 (2 of 1934) or under such other analogous provision of the other Act(s). Similarly, these rules shall extend to the petitions or applications filed under various provisions of the existing Acts before the Company Law Board.

Explanation:- For the purpose of the said provisions, wherever the words "Company Law Board" or "Board", are mentioned, the same shall be treated as if such provision or word is addressing or referring to "Tribunal".

106. Reference to the Tribunal:

Any reference to the Tribunal by the Registrar of Companies under second proviso to sub-section (1) of section 252, section 441 of the Act, or any reference to the Tribunal by the Central Government under proviso to sub-section (5) of section 140, 221, sub-section (2) of section 224, sub-section (5) of section 224, sub-section (5) of section 233, sub-section (2) of section 241 of the Act, or any reference by a company under clause (c) of sub-section (4) of section 22A of the Securities Contracts (Regulations) Act, 1956 shall be made by way of a petition or application in **Form No. 9** in Annexure C and shall be accompanied by documents mentioned in Annexure-D.

PART VIII

SPECIAL PROVISIONS RELATING TO CERTAIN SPECIFIC MATTERS

107. Application under sub- section (7) of section 7.

1. Application under sub-section (7) shall be filed to the tribunal filed in form 1 and shall be accompanied such documents as are mentioned in Annexure –D

2. Every application filed under sub rule (1) shall also set out the following particulars.

a. Name of the company and other details including date of incorporation, name and address of the subscribers, promoters and first directors.

b. The details of false or incorrect information or representation or material facts or information suppressed.

c. details of such documents in or declaration filed or made for incorporating such company,

d. involvement of promoters, subscribers and first directors in committing fraud during the course of incorporation;

3. Tribunal may pass such orders, as it may think fit in accordance with clauses (a), (b), (c), (d) and (e) of sub-section (7) of section 7.

4. Before making any such order under sub-section(7) of section 7 Tribunal shall give reasonable opportunity to the company of being heard in the matter, and shall take into consideration the transactions entered into by the company, including the obligations, if any, contracted or payment of any liability.

108. Petition under section 14.

(1) A petition under second provision to sub-section (1) of section 14 for the conversion of a public company into a private company, shall, not less than three months from the date of passing of special resolution, be filed to the Tribunal in

Form No. 1 and shall be accompanied with such documents as are mentioned in Annexure D.

(2) Every petition filed under sub-rule (1) shall set out the following particulars:

(a) the date of the Board meeting at which the proposal for alteration of memorandum was approved;

(b) the date of the general meeting at which the proposed alteration was approved;

(c) state at which the registered office of the company was situated;

(d) State number of members in the company, number of members attended the meeting and number of members of voted for and against.

(e) reason for conversion into a private company effect of such conversion on shareholders, creditors, debenture holders and other related parties.

(f) state listed or unlisted public company.

(g) state the nature of the company that is a company limited by shares, a company limited by guarantee(having share capital or not having share capital) and unlimited company

(h) state whether a company registered under section 8 of the Act.

(3) There shall be attached to the application, a list of creditors and debenture holders, drawn up to the latest practicable date preceding the date of filing of petition by not more than two months, setting forth the following details:

(a) the names and address of every creditor and debenture holder of the company;

(b) the nature and respective amounts due to them in respect of debts, claims or liabilities;

(c) in respect of any contingent or unascertained debt or any such claim admissible to proof in winding up of the company, the value, so far as can be justly estimated of such debt or claim:

Provided that the petitioner company shall file an affidavit, signed by the company secretary of the company, if any and not less than two directors of the company, one of whom shall be a managing director, where there is one, to the effect that they have made a full enquiry into the affairs of the company and, having done so, have formed an opinion that the list of creditors is correct, and that the estimated value as given in the list of the debts or claims payable on a contingency or not ascertained are proper estimates of the values of such debts and claims and that there are no other debts of , or claims against, the company to their knowledge.

(4) A duly authenticated copy of such list of creditors shall be kept at the registered office of the company and any person desirous of inspecting the same may, at any time during the ordinary hours of business, inspect and take extracts from the same on payment of the sum of rupees ten per page to the company.

(5) The company shall at least 14 days before the date of hearing

(a) advertise the petition in accordance with rule 11;

(b) serve, by registered post with acknowledgement due, individual notice(s) , in **Form No. 3 B** to the effect set out in sub-rule (a) above on each debenture-holder and creditor of the company; and

(c) serve, by registered post with acknowledgement due, a notice together with the copy of the petition to the Central Government, Registrar of companies and to the Securities and Exchange Board, in the case of listed companies and to the regulatory body, if the company is regulated under any Special Act:

(6) Where any objection of any person whose interest is likely to be affected by the proposed petition has been received by the petitioner, it shall

serve a copy thereof to the Registrar of companies on or before the date of hearing:

(7) While passing an order, the Tribunal may, if it is satisfied, having regard to all the circumstances of the case, that the conversion would not be in the interest of the company or is being made with a view to contravene or to avoid complying with the provisions of the Act, disallow the conversion.

109. Application to Cancel Variation of Rights under sub-section (2) of Section 48.

(1) Where an application to cancel a variation of the rights attaching to any class of shares is made on behalf of the shareholders of that class entitled to apply for cancellation under sub-section (2) of section 48 by the letter of authority signed by the shareholders so entitled, authorizing the applicant or applicants to present the application on their behalf, shall be annexed to the application, and the names and addresses of all the said shareholders, the number of shares held by each of them, aggregate number of such shares held and percentage of the issue shares of that class shall be set out in the schedule to the application.

(2) The application in **Form No. 1** shall be accompanied by documents mentioned in Annexure D and shall set out;

(a) the particulars of registration

(b) the capital structure , the different classes of shares into which the share capital of the company is divided and the rights attached to each class of shares

(c) the provisions of the memorandum or articles authorizing the variation of the rights attached to the various classes of shares

(d) the total number of shares of the class whose rights have been varied

(e) the nature of the variation made, and so far as may have been ascertained by the applicants, the number of shareholders of the class who gave their consent to the variation or voted in favor of the resolution for variation and the number of shares held by them,

(f) the number of shareholders who did not consent to the variation or who voted against the resolution, and the number of shares held by them,

(g) the date or dates on which the consent was given or the resolution was passed,

(h) the reasons for opposing the variation.

(3) The applicant shall at least 14 days before the date of the filing of the petition advertise the application in accordance with rule 11.

(4) Where any objection of any person whose interest is likely to be affected by the proposed application has been received by the applicant, it shall serve a copy thereof to the Registrar of companies and Regional Director on or before the date of hearing:

(5) On any such application, the Tribunal, after hearing the applicant and any other person as appears to it to be interested in the application, may, if it is satisfied, having regard to all the circumstances of the case, that the variation would unfairly prejudice the shareholders of the class represented by the applicant, disallow the variation, and shall if not so satisfied, confirm the variation:

Provided that the Tribunal may, at its discretion, make such orders as to cost as it thinks fit.

(6) The decision of the Tribunal on any such application shall be final.

110. Petition under sub-section (3) of section 55

(1) The petition in **Form No. 1** shall be accompanied by documents mentioned in Annexure D and shall set out:

(a) the particulars of registration

(b) the capital structure, the different classes of shares into which the share capital of the company is divided;

(c) the provisions of the memorandum or articles authorizing the issue of preference shares;

(d) the total number of preference shares issued;

(e) Details of such preference shares which are not redeemed or unable to pay dividend.

(f) Terms and conditions of issue of such existing preference shares.

(g) The total number of such preference shares (unredeemed) and number of holders consented for with value of such preference shares and percentage of holders who have consented for.

(h) The date or dates on which the consent was given or the resolution was passed.

(2) On any such petition, the Tribunal, after hearing the petitioner and any other person as appears to it to be interested in the petition, may, if it is satisfied, having regard to all the circumstances of the case may approve for issue of further redeemable preference shares equal to the amount due, including the dividend thereon, in respect of unredeemable preference shares.

Provided that the Tribunal shall, while giving approval, order the redemption forthwith of preference shares held by such persons who have not consented to the issue of further redeemable preference shares;

Provided further that the Tribunal may, at its discretion, make such orders as to cost as it thinks fit.

(3) The decision of the Tribunal on any such petition shall be final.

111. Form of application or petition for reduction of share capital under section 66 and Notice of Admission for directions:

(1) An application to confirm a reduction of the share capital of a company shall be in **Form No. 13**, and shall be accompanied by a notice of admission for directions in **Form No.14**. Such application shall be accompanied by documents mentioned in Annexure D.

(2) The application filed under sub-rule (1) shall set out the following particulars:

(a) existing capital structure of the company;

(b) proposed capital structure after the reduction;

(c) terms and conditions of the reduction of share capital indicating clearly whether the reduction of share capital involves diminution of any liability in respect or unpaid share capital or the payment to any shareholder of any paid-up share capital and whether the company has creditors or any class of them entitled to object;

(d) provisions of the articles of association of the company authorizing such reduction of capital;

(e) date of passing of special resolution by the members in the general meeting of the company;

(f) the number of members present and voting at such meeting and number of shares/ voting power held by them;

(g) the number of members who voted in favour of the resolution for reduction of capital and the number of shares/ voting power held by them;

(h) the number of members who voted against the resolution and the number of shares/ voting power held by them;

(i) reasons for such reduction of share capital.

112. Procedure on hearing of Notice of Admission:

Upon the hearing of the notice of admission and after giving notice to the Central Government, Registrar of companies and to the Securities and Exchange Board, in the case of listed companies, or in the case of non banking financial companies to the Reserve Bank of India and the creditors of the company, if the Tribunal is satisfied that the proposed reduction does not involve either diminution of liability in respect of unpaid share capital or payment to any shareholder of any paid-up share capital and does not think fit to direct that the procedure prescribed in section 66 shall apply, it shall fix a date for hearing of the application and give such directions as it may think fit as to the advertisement of the application. The application shall be posted for hearing on the date fixed, and upon the hearing thereof, the Tribunal may confirm the reduction on such terms and conditions as he may think fit.

113. Directions at the hearing of Notice of Admission:

Where the proposed reduction involves either diminution of liability in respect of unpaid share capital or the payment to any shareholder of any paid-up share capital and, in any other case, if the Tribunal thinks fit to direct that the procedure prescribed in section 66 of the Act shall apply, the Tribunal may, upon the hearing of the notice of admission or upon any adjourned hearing thereof, or upon the hearing of any subsequent application, give such directions as it may think fit as to the proceedings to be taken, and more particularly with respect to the following matters, that is to say:

(a) the proceedings to be taken for settling the list of creditors entitled to object, including the dispensing with the observance of the provisions of said section 66 as regards any class or classes of creditors ;

(b) fixing the date with reference to which the list of such creditors is to be made out,

(c) the publications of notices ; and

(d) generally fixing the time for and giving directions as to all other necessary or proper steps in the matter.

The order made upon the notice of admission under this rule shall be in **Form No. 15** with such variations as the circumstances may require

114. List of Creditors:

The company shall, within the time allowed by the Tribunal, file a list in **Form No. 16** made out by an officer of the company competent to make the same, containing the names and addresses of the creditors of the company to whom the enquiry extends as on the date fixed by the Tribunal under the last preceding rule, and the respective amounts due to them in respect of debts, claims or liabilities to which the enquiry extends or in case of any such debt payable on a contingency or not ascertained, or any such claim admissible to proof in a winding-up of the company, the value, so far as can be justly estimated, of such debt, or claim.

115. Affidavit verifying list of Creditors:

Such list shall be verified by an affidavit made by an officer of the company competent to make the same, who, in such affidavit, shall state his belief that the list verified by such affidavit is correct, that the estimated values, as given in the list, of the debts payable on a contingency or not ascertained, or of any claims admissible to proof in a winding-up, are just and proper estimates of the values of such debts and claims respectively, and that there was not, at the date fixed by the Tribunal under rule 134, any debt, claim or liability which if that date were commencement of the winding-up of the company, would be admissible in proof against the company, except the debts, claims and liabilities set forth in such list as filed under rule 136 and any debts, claims or liabilities to which the enquiry does not extend,

and shall state the source of his knowledge or information and the grounds of his belief regarding the matters deposed to in such affidavit. Such affidavit shall be in **Form No. 17**, with such variations as the circumstances of the case may require.

116. Inspection of list of creditors:

Copies of such list shall be kept at the registered office of the company and at the office of the authorised representative of the company, and any person desirous of inspecting the same may, at any time during the ordinary hours of business, inspect and take extracts from the same on payment of the sum of rupees fifty for inspection and for taking extracts on payment of the sum of rupees ten per page to the company.

117. Notice to Creditors:

(i) The company shall, within seven days after the filing of the list of creditors referred to in rule 136 or such further or other time as the Tribunal may allow, send to each creditor whose name is entered in the said list, a notice of presentation of the application and of the said list, stating the amount of the proposed reduction of capital and the amount or estimated value of the debt or the contingent debt or claim or both for which such creditor's name is entered in the said list, and the time, as fixed by the Tribunal, within which if he claims to be entitled to be entered on such list as a creditor for a larger amount, he must send in his name and address, and the particulars of his debt or claim, and the name and address of his authorised representative if any, to the authorised representative of the company.

(ii) Such notice shall be in **Form No. 18** and shall, unless the Tribunal in the manner as prescribed under Part II of these rules or otherwise directs in the manner to each creditor at his last known address or place of abode:

Provided that where his address is not known to the company, the Tribunal may direct notice to be given to such creditor in such manner as the Tribunal may think fit.

118. Advertisement of the petition or application and list of creditors:

(i) Notice of the presentation of the application and of the list of creditors under rule 114 read with rule 115, shall, within seven days after the filing of the said list or such further or other times as the Tribunal may allow, be advertised by the company in such manner as the Tribunal shall direct.

(ii) Such notice shall state the amount of the proposed reduction of share capital, and the places, where the aforesaid list of creditors may be inspected, and the time as fixed by the Tribunal within which creditors of the company who are not entered but claim to be entitled to be entered on the said list, must send in their names and addresses and the particulars of the debts or claims and the names and addresses of their authorised representatives, if any, to the authorised representative of the company. Such notice shall be in **Form No.19**.

119. Affidavit for Proof of Service:

The company shall, as soon as may be, file an affidavit proving the dispatch and publication of the notices referred to in rules 138 and 139. Such affidavit shall be in **Form No. 20**.

120. Statement by company as to the result of rules 117 and 118:

(i) The company shall within the time fixed by the Tribunal, file a statement signed and verified by the authorised representative of the company stating the result of the notices mentioned in rules 117 and 118 respectively and verifying a list containing the names and addresses of the persons, if any, who shall have sent in

the particulars of their debts or claims in pursuance of such notices respectively and the amounts of such debts or claims.

(ii) Such statement shall be accompanied by an affidavit made by a competent officer or officers of the company who shall, in such list, distinguish which (if any) of such debts and claims are wholly, or as to any and what part thereof, admitted by the company, and which (if any) of such debts and claims are wholly or as to any and what part thereof, disputed by the company, and which (if any) of such debts and claims are alleged by the company to be wholly, or as to any and what part thereof not included in the enquiry.

(iii) Such affidavit shall also state which of the persons, who are entered in the list as creditors and which of the persons, who have sent in particulars of their debts or claims in pursuance of such notices as aforesaid, have been paid or have consented to the proposed reduction. Such statement shall be in **Form No.21**.

121. Procedure where claim is not admitted, and proof of debt:

(i) If the company contends that a person is not entitled to be entered in the list of creditors in respect of any debts or claim, whether admitted or not, or if any debt or claim, the particulars of which are so sent in, shall not be admitted by the company at its full amount, then, and in every such case, unless the company is willing to set apart and appropriate in such manner as the Tribunal shall direct, the full amount of such debt or claim, the company shall, if the Tribunal thinks fit so to direct, sent to the creditor a notice in **Form No.22** that he is required to come in and establish his title to be entered on the list, or as the case may be, to come in and prove such debts or claim or such part thereof as is not admitted by the company on the day fixed by the Tribunal.

(ii) Such notice shall be served not less than four clear days before the date fixed by the Tribunal.

(iii) A proof of debt by a creditor shall be in **Form No. 23**. Where the creditor is for good reason personally unable to make the affidavit, his authorised agent may make the same.

122. Costs of Proof:

The costs of proof of a debt or claim or any enquiry under the preceding rules shall be at the discretion of the Tribunal.

123. Certificate by the Tribunal as to Creditors:

The result of the settlement of the list of creditors shall be stated in a certificate which shall be prepared by the authorised representative of the company and signed by the Tribunal. Such certificate shall -

(1) specify the debts or claims (if any) which have been disallowed ;

(2) distinguish (a) the debts or claims, the full amount of which the company is willing to set apart and appropriate ; (b) the debts or claims (if any) the amount of which has been fixed by enquiry and adjudication in the manner provided by section 66 and these rules ; and (c) the debts or claims (if any) the full amount of which the company does not admit or is not willing to set apart and appropriate or the amount of which has not been fixed by enquiry and adjudication as aforesaid ; and

(3) show (a) which of the creditors have consented to the proposed reduction, and the total amount of the debts due to them ; and (b) the total amount of the debts or claim the payment of which has been secured in the manner provided by section 66 and the persons to or by whom the same are due or claimed.

The said certificate shall also state which creditors have under rule 119 come in and sought to establish their title to be entered on the list and whether such claims have been allowed or not, but it shall not be necessary to make in such certificate any

further or other reference to any creditors who are not entitled to be entered in the list or to any debts or claims to which the enquiry does not extend or to show therein the several amounts of the debts or claims of any persons who have consented to the proposed reduction or the payment of whose debts or claims has been secured as aforesaid.

124. Hearing of the petition or application:

After the expiry of not less than fourteen days from the filing of the certificate mentioned in the preceding rule, the application shall be set down for hearing. Notice of the date fixed for the hearing of the application shall be advertised within such time and in such newspaper or newspapers as the Tribunal may direct and shall be in **Form No. 24**.

125. Who may Appear and Oppose:

Any creditor included in the certificate whose debt or claim has not, before the hearing of the application, been discharged or determined or been secured in the manner provided in section 66 and who has not before the hearing consented in writing to the proposed reduction of share capital may, if he thinks fit, upon giving two clear days' notice to the authorised representative for the company of his intention to do so, appear at the hearing of the application and oppose it. The costs of his appearance shall be in the discretion of the Tribunal.

126. Directions at Hearing:

(1) At the hearing of the application the Tribunal may, if he thinks fit, give such directions as may seem proper with reference to securing in the manner mentioned in section 66, the debts or claims of any creditors who do not consent to the proposed

reduction, and the further hearing of the application may be adjourned to enable the company to comply with such directions.

(2) Upon the hearing of the petition or application, if the Tribunal is satisfied that the proposed reduction does not involve either diminution or liability in respect of unpaid share capital or payment to any shareholder of any paid up share capital, it shall

(a) fix a date for hearing of the application; and

(b) give such directions as to the advertisement of the application, as it may think fit.

(3) Upon the hearing of the petition or application or upon any adjourned hearing thereof or upon the hearing of any subsequent application, if the Tribunal is satisfied that the proposed reduction involves either the diminution of liability in respect of unpaid share capital or the payment to any shareholder of any paid-up share capital, then

(a) the Tribunal shall require the company to file, within such time as allowed by the Tribunal, a list of creditors and debenture holders, drawn up to the latest practicable date preceding the date of filing of application by not more than two months, setting forth the following details:

(i) the names and address of every creditor and debenture holder of the company;

(ii) the nature and respective amounts due to them in respect of debts, claims or liabilities;

(iii) in respect of any contingent or unascertained debt or any such claim admissible to proof in a winding up of the company, the value, so far as can be justly estimated of such debt or claim:

Provided that the applicant company shall file an affidavit, signed by the Company Secretary of the company, if any and not less than two directors of the company, one of whom shall be a managing director, where there is one, to the effect that they have made a full enquiry into the affairs of the company and, having done

so, have formed an opinion that the list of creditors is correct, and that the estimated value as given in the list of the debts or claims payable on a contingency or not ascertained are proper estimates of the values of such debts and claims and that there are no other debts of , or claims against, the company to their knowledge.

(b) A duly authenticated copy of such list of creditors shall be kept at the registered office of the company and any person desirous of inspecting the same may, at any time during the ordinary hours of business, inspect and take extracts from the same on payment of the sum of rupees ten per page to the company.

(c) Any person claiming that his name shall be entered in the list of creditors or objects to the amount of debt payable to him according to such list, shall deliver or cause to be delivered by registered post, the objections supported by an affidavit, to the Registrar and shall also serve a copy of the objections on the applicant-company at its registered office.

(d) If the applicant-company contends that:
(i) the person filing any objection is not entitled to be entered in the list of creditors in respect of any debts or claim, whether admitted or not, or
(ii) any debt or claim, the particulars of which are so sent in, shall not be admitted by it, either in full or in part,
then, and in every such case, unless the company is willing to set apart and appropriate in such manner as the Tribunal directs, the Tribunal may direct such person to come in and establish his title to be entered on the list, or as the case may be, to come in and prove such debts or claims or such part thereof as is not admitted by the company on the day fixed by the Tribunal.

(e) The Tribunal may give such directions as he may think fit as to the proceedings to be taken, and more particularly with respect to the following matters, that is to say:

(i) the proceedings to be taken for settling the list of creditors entitled to object;

(ii) the publications of notices; and

(iii) generally fixing the time for and giving directions as to all other necessary or proper steps in the matter.

127. Order on the application:

Where the Tribunal makes an order confirming a reduction, such order shall include directions -

(a) as to the manner in which, the times at which and the newspaper or newspapers in which, notice of the registration of the order and of minute as approved by the Tribunal shall be published,

(b) as to the period commencing on or after the date of the order, during which the words 'and reduced' shall be added to the name of the company as the last words thereof, in case the Court thinks fit to direct under section 66 that the words shall be so added, and

(c) as to the publication, if the Tribunal so directs, of the reasons for reduction or the causes that led to it or such other information in relation thereto as the Tribunal may require to be published under section 66.

128. Minutes:

Unless the form of the minute has been approved by the Tribunal at the time of making the order confirming the reduction, the company shall, within seven days from the date of the said order, file for the approval of the Tribunal a draft of the minute containing the particulars required by section 66, and shall take an

appointment for approval of the same. The authorised representative for the company shall attend when the minutes comes up before the Tribunal for approval.

The order confirming the reduction of capital and approving the minute shall be in **Form No.25** with such variations as may be necessary.

129. Advertisement of Reasons for Reduction of Share Capital:

Where the Tribunal makes an order directing the company to publish the reasons for the reduction or such other information in regard thereto as the Tribunal may direct, unless the form of the statement to be published has been approved by the Tribunal at the time of making the order, the company shall, within seven days of the order, file, for the approval of Tribunal, a draft of the statement and shall take an appointment for approval of the same. The authorised representative of the company shall attend when the statement comes up for approval before the Tribunal. The statement as approved shall be published in the same newspapers in which notice of the registration of the order and the minute has been directed to be published.

130. Form of Minute and Notice of Registration:

The Minute may be in **Form No.26** and the Notice of Registration of the order and the minute shall be in **Form No. 27**.

131. Petition under sections 58 & 59.

(1) The petition against the refusal for registration of transfer or transmission of securities under section 58 or for rectification of Register of members under section

59 shall be made to the Tribunal by way of a petition in **Form No. 1** and shall be accompanied by such documents as are mentioned in Annexure D:
Provided that a copy of such petition shall be served on the concerned company at its registered office immediately after filing of the petition with the Tribunal.

(2) The petitioner shall at least 14 days before the date of hearing advertise the petition in accordance with rule 11.
(3) Where any objection of any person whose interest is likely to be affected by the proposed petition has been received by the petitioner, it shall serve a copy thereof to the Registrar of Companies and Regional Director on or before the date of hearing:

(4) The Tribunal may, while dealing with a petition under section 58 or 59, at its discretion, make-
(a) order or any interim order, including any orders as to injunction or stay, as it may deem fit and just;
(b) such orders as to costs as it thinks fit; and
(c) incidental or consequential orders regarding payment of dividend or the allotment of bonus or rights shares.

(5) On any petition under section 59, the Tribunal may-
(a) decide any question relating to the title of any person who is a party to the petition to have his name entered in, or omitted from, the register;
(b) generally decide any question which is necessary or expedient to decide in connection with the application for rectification.
(6) The decision of the tribunal on any such petition shall be final.

132. Application under proviso to clause (b) of sub-section (1) of section 61.

(1) An application for obtaining the approval of the Tribunal for the consolidation and division of all or any of its share capital into shares of a larger amount than its existing shares which results in changes in the voting percentage of shareholders shall

be filed in **Form No. 1** and shall be accompanied with such documents as are mentioned in Annexure D.

(2) The application shall, inter alia, set forth the following:

(a) provision of articles authorizing such consolidation or division;

(b) existing capital structure of the company;

(c) new capital structure of the company after the consolidation or division;

(d) class of shares being consolidated or divided;

(e) face value of shares pre and post consolidation or division;

(f) justification for such consolidation or division.

(3) The company shall at least 14 days before the date of hearing

(a) advertise the petition in accordance with rule 11; and

(b) serve, by registered post with acknowledgement due, a notice together with the copy of the application to the Central Government, Registrar of Companies and to the Securities and Exchange Board, in the case of listed companies and to the regulatory body, if the company is regulated under any Special Act:

(4) Where any objection of any person whose interest is likely to be affected by the proposed application has been received by the applicant, it shall serve a copy thereof to the Central government Registrar of Companies and Securities Exchange Board of India, in the case of listed companies and to regulated body, if the company is regulated under any Special Act on or before the date of hearing:

(5) Upon hearing the application or any adjourned hearing thereof, the Tribunal may pass such order, subject to such terms and conditions, as thinks fit.

133. Application under sections 71 (10), section 73(4) or section 76(2) read with section 73(4), section 74(2), section 76(2) read with section 74(2)

(1) Where a company fails to redeem the debentures or repay the deposits or any part thereof or any interest thereon, an application under sub-section (10) of section 71 or under sub-section (4) of section 73 of the Act or section 45QA of the Reserve Bank of India Act, 1934 (2 of 1934), shall be filed to the Tribunal, in **Form No. 11** in duplicate and shall be accompanied by such documents as are mentioned in Annexure D, by-

(a) in case of debentures, all or any of the debenture holders(s) concerned, or debenture trustee; or

(b) in case of deposits, all or any of the depositor(s) concerned, or where the deposits are secured, by the deposit trustee.

(2) There shall be attached to the application, a list of depositors or debenture holders, as the case may be, setting forth the following details in respect of every such depositor or debenture holder:

(a) Full name, age, father's/ mother's/ spouse's name, occupation and full residential address

(b) Fixed deposit receipt number or debenture certificate number, as the case may be.

(c) Date of maturity;

(d) Amount due to such person by the company;

(e) Amount already paid by the company, if any;

(f) Total amount due as on the date on the application:

Provided that where the company is the applicant, it shall file an affidavit stating the list of depositor(s) or debenture holder (s), as the case may be, is correct, and that the estimated value as given in the list of the amount payable to such depositors or debenture holders are proper estimates of the values of such debts and claims.

(3) The Tribunal shall pass an appropriate order within a period of sixty days from the date of receipt of application under sub-rule (1):

Provided that the Tribunal shall, before making any order under this rule, give a reasonable opportunity of being heard to the company and the other persons interested in the matter.

(4) The Tribunal may, if it is satisfied, on the application filed under sub-rule (1), that it is necessary so to do, to safeguard the interests of the company, the debenture holder(s) or the depositor(s), as the case may be, or in the public interest, direct, by order, the company to make repayment of such deposit or debenture or part thereof forthwith or within such time and subject to such conditions as may be specified in the order:

Provided that while passing such an order, the Tribunal shall consider the financial condition of the company, the amount or deposit or debenture or part thereof and the interest payable thereon.

(5) Where a company failed to repay the deposits under section 76 or part there of or any interest there on in accordance with sub-section (3) or sub-section(4) of sub-section 73 or sub-section (2) of section 74 and in accordance with the above rules the provisions of section 75 shall be applicable.

(6) (a) the application under section 74(2) and 76(2) read with section 74(2) shall be in Form 1 and shall accompanied with the documents as per Annexure D.

(b) A copy of the application made under :

(i) section 74(2) shall be served on the Regional Director and the Registrar of Companies before the date of hearing;

(ii) section 76(2) read with section 74(2) shall be served on the Regional Director and the Registrar of Companies before the date of hearing.

(c) The Registrar of Companies in consultation with Regional Director shall submit before the Tribunal, the report on the affairs of the company within thirty days from the date of the receipt of the application and Tribunal may consider such observations made by the Registrar of Companies before passing an order.

134. Application under section 97 for calling or obtaining a direction to call annual general meeting.

(1) An application under section 97 for calling or obtaining a direction to call the annual general meeting of the company shall be made by any member of the company. Such application shall be made in **Form No. 1** and shall be accompanied by the documents specified in Annexure D.

(2) A copy of the application shall be served on the Registrar of Companies on or before the date of hearing.

135. Application for obtaining an order for calling of general meeting (other than Annual General Meeting) under section 98

(1)An application under section 98 for obtaining an order for calling of a general meeting (other than Annual General Meeting) shall be made by any director or member of the company who would be entitled to vote at the meeting. Such application shall be made in **Form No. 1** and shall be accompanied by the documents specified in Annexure D.

(2) A copy of the application shall be served on the Registrar of Companies on or before the date of hearing.

136. Petition or application under section 130.

(1) A petition or application under sub-section (1) of section 130 for obtaining an order of re-opening of books of account and recasting of financial statement of a company shall be filed to the Tribunal in **Form No. 1** and shall be accompanied by such documents as are mentioned in Annexure D.

(2) The petition or application shall, inter alia, set forth the following particulars:

(a) financial year or period to which such accounts relates;

(b) the name and contact details of the officer of the company responsible for making and maintaining such books of accounts and financial statement;

(c) where such accounts are audited, the name and contact details of the auditor who audited such accounts;

(d) brief particulars of the fraud or mismanagement casting a doubt on the reliability of financial statement;

(e) circumstances that made the company to derive to the conclusion that the accounts were prepared in a fraudulent manner or the affairs of the company were mis-managed during the relevant period;

(f) financial impact of such fraud or mis-management.

(3) The company shall at least 14 days before the date of hearing:

(a) advertise the petition in accordance with rule 11;

(b) serve, by registered post with acknowledgement due, individual notice(s) , in **Form No. 3 B** to the effect set out in sub-rule (a) above on each debenture-holder and creditor of the company; and

(c) serve, by registered post with acknowledgement due, a notice together with the copy of the petition to the Central Government, Registrar of Companies, the Income-tax authorities and to the Securities and Exchange Board, in the case of listed companies and to the regulatory body, if the company is regulated under any Special Act:

(4) Where any objection of any person whose interest is likely to be affected by the proposed petition has been received by the petitioner, it shall serve a copy thereof to the Registrar of Companies, Central Government, the Income- tax authorities and to the Securities and Exchange Board, in the case of listed companies and to the regulatory body, if the company is regulated under any Special Act on or before the date of hearing:

(5) Where no objection has been received from any of the parties, who have been duly served, the Registrar of Tribunal or Bench as the case may be may put up the petition for orders without hearing.

(6) Upon the hearing the petition or any adjourned hearing thereof, the Tribunal may pass such an order, subject to such terms and conditions, as it thinks fit:

137. Petition or application under section 252.

(1) A petition or application under sub-section (1) of section 252, filed to the Tribunal in Form No. 9 to restore the name of a company in the register of companies shall be served on the Registrar and on such other persons as the Tribunal may direct, not less than 14 days before the date fixed for hearing of the petition.

(2) The petitioner or applicant shall at least 14 days before the date of hearing advertise the petition in accordance with rule 11.

(3) Upon hearing the petition or any adjourned hearing thereof, the Tribunal may pass such an order, subject to such terms and conditions, as it thinks fit.

(4) Where the Tribunal makes an order restoring the name of such company to the register of companies, the order shall direct that

(a) the petitioner to deliver to the Registrar of Companies a certified copy thereof within 30 days from the date of the order;

(b) on such delivery, the Registrar of Companies do, in his official name, advertise the order in the Official Gazette; and

(c) the petitioners do pay to the of Registrar of Companies his costs of, and occasioned by, the petition, unless for any special reasons the Tribunal orders otherwise.

(5) If the Registrar of Companies is satisfied that the name of the company has been struck off from the register of companies either inadvertently or on the basis of incorrect information furnished by the company or its directors, which requires restoration in the register of companies, he may within a period of three years from the date of passing of the order dissolving the company under section 248, file a petition or an application before the Tribunal under second proviso to sub-section (1) of section 252 seeking restoration of name of such company. The petition or application hereto shall be near to **Form No. 9.** Upon hearing the petition or any adjourned hearing thereof, the Tribunal may pass such an order, subject to such terms and conditions, as it thinks fit.

PART IX
MISCELLANEOUS

138. Enlargement of Time:

Where any period is fixed by or under these rules, or granted by Tribunal for the doing of any act, or filing of any document or representation, the Tribunal may, in its discretion from time to time, enlarge such period, even though the period fixed by or under these rules or granted by the Tribunal may have expired.

139. Saving of Inherent Powers of the Tribunal:

Nothing in these rules or otherwise affect the inherent powers of the Tribunal to make such order or pass such direction as may be necessary for the ends of justice or to prevent abuse of the process of the Tribunal.

140. Amendment of Order:

Any clerical or arithmetical mistakes in any order of the Tribunal or error therein arising from any accidental slip or omission may, at any time, be corrected by the Tribunal on its own motion or on application of any party by way of review.

141. General Power to Amend:

The Tribunal may, at any time, and on such terms as to costs or otherwise, as it may think fit, amend any defect or error in any proceeding before it; and all necessary amendments shall be made for the purpose of determining the real question or issue raised by or depending on such proceeding.

142. Tribunal to be deemed to be a Court for Certain Purposes:

The Tribunal shall be deemed to be a court for all purposes including for the purpose of prosecution or punishment of a person who willfully disobeys any direction or order of the Tribunal.

143. Preparation of paper book.

The (Registrar/Registry), if it so deemed fit, may call upon the parties to prepare a paper book after completion of the pleadings**.**

144. Power to Dispense with the Requirements of the Rules:

Every Bench of the Tribunal shall have power for reasons to be recorded in writing, to dispense with the requirements of any of these rules, subject to such terms and conditions as may be specified.

145. Punishment

(a) Saved as other provided in the Act, if any person intentionally gives false evidence upon an examination on oath of Solomon affirmation he shall be punishable with imprisonment for a term which shall not be less than three years but which may extent to seven years and with fine which may extent to ten lakhs of rupees in accordance with section 449 of the Act.

(b) If a company or any officer of a company or any other person contravenes any of the provisions of this Act or the rules made thereunder, or any condition, limitation or restriction subject to which any approval, sanction, consent, confirmation, recognition, direction or exemption in relation to any matter has been accorded, given or granted, and for which no penalty or punishment is provided elsewhere in this Act, the company and every officer of the company who is in default or such other person, notwithstanding any other liability or action, shall be punishable with fine which may extend to ten thousand rupees, and where the contravention is continuing one, with a further fine which may extend to one thousand rupees for every day after the first during which the contravention continues in accordance with section 450 of the Act.

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DRAFT RULES UNDER COMPANIES ACT, 2013

National Company law Appellate Tribunal (Salaries and Allowances and other Terms and Conditions of Service of the Chairperson and other Members) Rules, 2013

In exercise of the powers conferred by section 414 read with sub-section (2) of section 469 of the Companies Act, 2013 (of 2013) the Central Government hereby makes the following rules, namely:-

1. Short title and commencement:-

(1) These rules may be called the National Company Law Appellate Tribunal (Salaries and Allowances and other terms and conditions of service of the Chairperson and other Members) Rules, 2013.

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

2. Definitions:-

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

(a) 'Act' means the Companies Act, 2013 (of 2013);

(b) 'Chairperson' means the Chairperson of the Appellate Tribunal appointed under sub-section (1) of section 412 of the Act;

(2) Words and expressions used in these rules and not defined, but defined in the Act shall have the meanings respectively assigned to them in the Act.

3. Salary, allowances, etc. of the Chairperson:-

(a) When a serving or a retired Judge of the Supreme Court, is appointed as Chairperson, he shall be entitled to a monthly salary, and to such allowances and other benefits, as are admissible to a serving Judge of the Supreme Court.

(b) When a serving or a retired Chief Justice of a High Court, is appointed as Chairperson, shall be entitled to a monthly salary and to such allowances and other benefits as are admissible to a serving Chief Justice of the High Court of the Headquarter station of the Appellate Tribunal.

Provided that in case the retired Judge of the Supreme Court or the retired Chief Justice of a High Court, is in receipt of, or has received or has become entitled to receive any retirement benefits by way of pension, gratuity, employers contribution to the Contributory Provident Fund or other forms of retirement benefits, the pay of such Chairperson shall be reduced by the gross amount of pension or employers contribution to the Contributory Provident Fund or any other form of retirement benefits, if any (except pension equivalent of gratuity), drawn or to be drawn by him.

4. Other conditions of service of Chairperson:-

(1) In case of serving or retired Judge of the Supreme Court or serving or retired Chief Justice of a High Court is appointed to the Appellate Tribunal, the conditions of service of Chairperson for which no provision is made in these rules shall be governed by the Supreme Court Judges (Conditions of Service) Act, 1958 (41 of 1958), Supreme Court Judges (Travelling Allowance) Rules, 1959 and any other rules made under that Act, or the High Court Judges Act, 1954 (28 of 1954), High Court Judges (Travelling Allowance) Rules, 1956 and any other rule made under that Act, as the case may be.

(2) In case of serving or retired Judge of the High Court is appointed as Member of the Appellate Tribunal, the conditions of service of Member for which no provision is made in these rules shall be governed by the High Court Judges Act, 1954 (28 of 1954), High Court Judges (Travelling Allowance) Rules, 1956 and any other rule made under that Act.

5. Salary of Member:-

(1) (a) Every Judicial Member shall be entitled to a monthly salary and to such allowances and other benefits as are admissible to a serving Judge of the High Court of the Headquarter station of the Appellate Tribunal.

(b) every Technical Member shall be paid a salary of eighty thousand rupees (fixed) per mensem.

Provided that in case of appointment of a person as a Member who has retired from the service under the Central Government or a State Government or any local body or authority owned or controlled by the Central Government or State Government or the Supreme Court or a High Court, as the case may be, who is in receipt of, or has received or has become entitled to received any retirement benefits by way of pension, gratuity, employers contribution to the Contributory Provident Fund or other forms of retirement benefits, the pay of such Member shall be reduced by the gross amount of pension or employers contributions to the Contributory Provident Fund or any other form of retirement benefits, if any (except pension equivalent to gratuity), drawn or to be drawn by him.

6. Dearness Allowance and other Allowances:-

(1) The Chairperson who is or has been a Judge of the Supreme Court or Chief Justice of a High Court shall receive dearness allowance at the rate admissible to a Judge of the Supreme Court or the Chief Justice of the High

(b)The Technical Member shall be governed in the matters relating to his rights in respect of leave by the Central Civil Services (Leave) Rules, 1972.

(2) The payment of leave salary to the persons appointed as Chairpersons after their retirement from the Supreme Court or the High Court and Members during leave shall be governed by rule 40 of the Central Civil Services (Leave) Rules, 1972.

(3) The Chairperson and Members shall be entitled to encashment of leave in respect of the Earned Leave standing to his credit, subject to the condition that maximum leave encashment, including received at the time of retirement from previous service shall not in any case exceed the prescribed limit of 300 days.

8. Leave sanctioning authority:-

In the case of the Chairperson, the Minister in charge of the Ministry of Corporate Affairs, and in the case of a Member, the Chairperson, shall be the leave sanctioning authority.

9. Pension:-

The Chairperson and a Member shall have the option either to be governed by New Pension Scheme or annuitization or complete withdrawal of the corpus plus accretion.

10. Travelling Allowance:-

When a serving or retired Judge of the Supreme Court or Chief Justice of a High Court is appointed to the Appellate Tribunal as Chairperson he while on tour or on transfer (including the journey undertaken to join Appellate Tribunal or on the expiry of his term with the Appellate Tribunal to proceed

to his home town) shall be entitled to travelling allowance, daily allowances, transportation of personal effects and other similar matters at the same scale and at the same rates as are applicable to Supreme Court Judge or Chief Justice of High Courts as per orders issued by the concerned Courts from time to time.

In case of Judicial Member of Appellate Tribunal, while on tour or on transfer (including the journey undertaken to join Appellate Tribunal or on the expiry of his term with the Appellate Tribunal to proceed to his home town) shall be entitled to travelling allowance, daily allowances, transportation of personal effects and other similar matters at the same scale and at the same rates as are applicable to Judge of High Court and in case of Technical Member at the same rates as are applicable to Group 'A' Officers of the Central Government drawing an equivalent pay.

11. Leave Travel Concession:-

(a) When a serving or retired Judge of the Supreme Court or Chief Justice of a High Court is appointed as Chairperson, he shall be entitled to Leave Travel Concession as is admissible to a serving Judge of the Supreme Court or Chief Justice of a High Court, as the case may be;

(b)The Judicial Member of Appellate Tribunal shall be entitled to Leave Travel Concession for self and family as admissible to re-employed pensioners and the entitlement will be as applicable to the Judge of High Court

(c) The Technical Members of Appellate Tribunal shall be entitled to Leave Travel Concession for self and family as admissible to re-employed prisoners and the entitlement will be that of the highest grade in the Central Government.

12. Facilities of Medical Treatment:-

The Chairperson and Members of Appellate Tribunal shall, while in service be entitled to medical treatment and hospital facilities as provided in the Contributory Health Services Rules, 1954 and in places where Central Health Services Scheme is not in operation, the said Chairperson and Member shall be entitled to the facilities as provided in the Central Services (Medical Attendance) Rules, 1944.

13. Transport:-

The Chairperson shall be entitled for conveyance facilities as admissible to serving Judge of a Supreme Court or Chief Justice of a High Court as the case may be. A Judicial Member shall be entitled for conveyance facilities as are admissible to serving Judge of a High Court. A Technical Member shall be entitled for conveyance facilities as are admissible to Group 'A' officer of the Central Government drawing an equivalent pay.

14. Accommodation:-

The Chairperson and Members of the Appellate Tribunal shall be entitled for General Pool Residential Accommodation. If they do not avail the accommodation facilities, they shall be entitled for House Rent Allowance as is admissible to Group 'A' officer of the Central Government or State Government drawing an equivalent pay.

15. Official visits abroad:-

(1) Official visits abroad by the Chairperson shall be undertaken with the prior approval of Minister-in-charge of the Ministry of Corporate Affairs and by the members with prior approval of the Chairperson, after clearance from the Ministry of External Affairs from political angle and from the Ministry of

Home Affairs for acceptance of foreign hospitality, if any, under the provisions of the Foreign Contribution (Regulation) Act, 1976.

(2) The daily allowance and provision of hotel accommodation during the period of tour abroad in case of Chairperson shall be regulated in accordance with his entitlement before joining the Appellate Tribunal, in case of Judicial Members shall be regulated in accordance with his entitlement before joining the Appellate Tribunal and in case of Technical Members shall be regulated in accordance with the Central Government instructions as applicable to Group 'A' officers of the Central Government drawing an equivalent pay.

(3) Indian missions abroad shall take care of arrangements and extend facilities as admissible to the Chairperson and the Member.

(4) The instructions issued by Ministry of External Affairs, Ministry of Finance and Ministry of Home Affairs as amended from time to time will be applicable and shall be followed while undertaking visits abroad.

16. Applicability of rules:-

(1) When a serving Judge of the Supreme Court or the Chief Justice of a High Court is appointed as the Chairperson, his terms and conditions of service shall be the same as were applicable to him prior to his appointment as the Chairperson:

Provided that in case of superannuation of Chairperson as Judge before the expiry of his term as Chairperson, his terms and conditions of service shall be the same as are applicable to a retired Judge of the Supreme Court or a retired Chief Justice of a High Court, as the case may be, under these rules, for remainder period of his term.

(2) When a serving Judge of the High Court is appointed as the member, his terms and conditions of service shall be the same as were applicable to him prior to his appointment as the member:

Provided that in case of superannuation of member as Judge before the expiry of his term as member, his terms and conditions of service shall be the same as are applicable to a retired Judge of the High Court under these rules, for remainder period of his term.

(3) When a person who is in Government Service or employed in any Public Sector Undertaking or any Authority including Autonomous Body of the Government or a Technical Member of the National Company Law Tribunal have been appointed as a Technical Member of the Appellate Tribunal, he shall be entitled for all the service benefits till his superannuation. After the date of his superannuation, his salary and other terms shall be in accordance with the terms of retired person who is appointed as Technical Member. In case a retired person is appointed as a Member his salary and other terms would be governed in accordance with the terms of the retired person (i.e., after making necessary adjustments of post retirement benefits).

17. Oath of office and secrecy:-

(1) Person appointed as the Chairperson shall, before entering upon his office, make and subscribe an oath of office and secrecy, in Form I and Form II annexed to these rules.

(2) Every person appointed as a member shall, before entering upon his office, make and subscribe an oath of office and secrecy, in Form I and Form II annexed to these rules.

18. Declaration of financial or other interest:-

Every person, on his appointment as the Chairperson or Member, as the case may be, shall give a declaration in Form III annexed to these rules, to the satisfaction of the Central Government, that he does not have any such financial or other interest as is likely to affect prejudicially his functions as Chairperson or Member, as the case may be.

19. Residuary provisions:-

Matters relating to the terms and conditions of service of the Chairperson or Member with respect to which no express provision has been made in these rules, shall be determined by the rules and orders for the time being applicable to a serving Judge or Chief Justice of a High Court as the case may be in the case of Chairperson and officer drawing an equivalent pay in the Central Government in case of Member.

20. Other Conditions of Service. –

Matters relating to the terms and conditions of service of the Chairperson or other Members with respect to which no express provision has been made in these rules, shall be referred by the Appellate Tribunal to the Central Government for its decision, and the decision of the Central Government thereon shall be final.

21. Powers to relax:-

The Central Government shall have power to relax any provision of these rules with respect to any class or category of persons.

Form - I

(See rule 17)

Form of oath of office for Chairperson or Members of the National Company Law Appellate Tribunal

"I, ..., having been appointed as Chairperson or member of the National Company Law Appellate Tribunal

do solemnly affirm

swear in the name of God

that I will faithfully and conscientiously discharge my duties as Chairperson or member to the best of my ability, knowledge and judgment, without fear or favour, affection or ill-will."

Signature: .....

Place: .....

Name: .....

Designation: .....

Date: .....

Form - II

(See rule 17)

Form of oath of secrecy for Chairperson or Members of the National Company Law Appellate Tribunal

"I, ..., having been appointed as Chairperson or member of the National Company law Appellate Tribunal

do solemnly affirm

swear in the name of God

that I will not directly or indirectly communicate or reveal to any person or persons any matter which shall be brought under my consideration or shall become known to me as Chairperson or member of the said Tribunal except as may be required for the due discharge of my duties as Chairperson or member."

Signature: .....

Place: .....

Name: .....

Designation: .....

Date: .....

Form - III

(See rule 18)

Declaration against acquisition of any adverse financial or other interest

I, ..., having been appointed as the Chairperson or Member (cross out portion not applicable) of the National Company Law Appellate Tribunal, do solemnly affirm and declare that I do not have, nor shall have in future any financial or other interest which is likely to affect prejudicially my functioning as the Chairperson or Member (cross out portion not applicable), of the National Company Law Appellate Tribunal.

Signature: .....

Place: .....

Name: .....

Designation: .....

Date: .....