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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