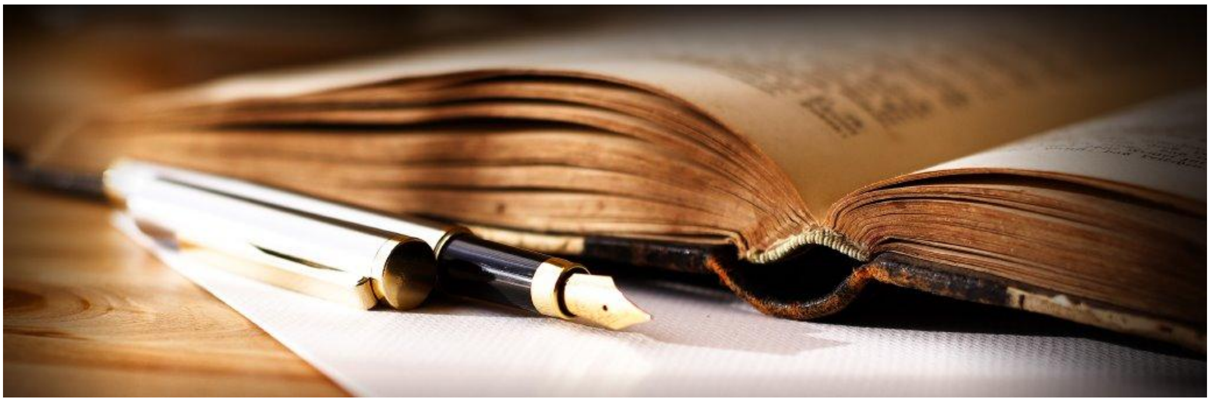
Dissecting the New Law



# Draft Rules to Companies Act, 2013

## Phase I

Relevant Provisions Analyzed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## Important Provisions under

# Draft Rules under the Companies Act, 2013

## As prescribed by the Ministry of Corporate Affairs

## Phase I

## Contents

## Chapter I: Preliminary

**1. Related Party** *(Section 2(76))*:

"Related party", with reference to a company, means:

i. a director or his relative;

ii. a KMP or his relative;

iii. a firm, in which a director, manager or his relative is a partner;

iv. a **private company** in which a director or manager is a member or director;

v. a **public company** in which a director or manager is a director or holds along with his relatives, more than 2% of its paid-up share capital;

vi. Any Body corporate whose Board of Directors, managing director or manager is accustomed to act in accordance with the advice, directions or instructions of a director or manager

vii. any person on whose advice, directions or instructions a director or manager is accustomed to act:

*Provided that nothing in Point (vi) and (vii) shall apply to the advice, directions or instructions given in a professional capacity;*

viii. any company which is—

A. a holding, subsidiary or an associate company of such company; or

B. a subsidiary of a holding company to which it is also a subsidiary;

**C. The Rules prescribe the following persons with reference to a company as a Deemed Related Party:**

a. **a director or KMP of the holding, subsidiary or associate company of such company or his relative**

b. Members of Core Management Team (excluding the Board of Directors) comprising all members of management one level below the executive directors, including the **functional heads of the company or its holding, subsidiary or associate company.**

**2. Relative** *(Section 2(77))*:

''relative'', with reference to any person, means anyone who is related to another, if:

i. they are members of a Hindu Undivided Family;

ii. they are husband and wife; or

iii. **The following relatives were prescribed under the rules**

1. Father **(including step-father)**
2. Father's father
3. Father's mother
4. Mother ( including step-mother )
5. Mother's mother
6. Mother's father
7. Son ( including step-son)
8. Son's wife
9. Son's son
10. Son's daughter
11. Daughter (including step-daughter)
12. Daughter's husband
13. Brother ( including step-brother)
14. Sister (including step-sister)

***Step Father has been included in the list of relatives and the following relatives have been excluded from the list of relatives under the erstwhile Companies Act, 1956:***

1. Son's Son's wife
2. Son's Daughter's Husband
3. Daughter's Son
4. Daughter's Son's Wife
5. Daughter's Daughter
6. Daughter's Daughter's Husband
7. Brother's Wife
8. Sister's Husband

# Chapter II: Incorporation of Company

1. **Undesirable Names** *(Section 2 (b) (ii))*

   i. a name for a company shall generally be considered undesirable if:

      a. the proposed name is vague or an abbreviated name, 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

      b. 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.

      c. 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.

      d. 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

      e. If 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.

      f. 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.

      g. No company shall be incorporated using the name of an enemy country.

**2. One Person Company**

i. Only a **natural person** who is an **Indian Citizen & Resident** *(person who has stayed in India for a period of minimum 182 days during the immediately preceding financial year)* is eligible for incorporating a One Person Company or is eligible to be appointed as a nominee of such Company.

ii. No person shall be eligible to incorporate more than 5 One Person Companies.

iii. Where a person becomes a member of more than 5 One Person Companies by virtue of his being a nominee, he/ she shall meet the eligibility criteria within 180 days.

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

v. If the paid up share capital of One Person Company exceeds Rs. 50 Lac or its average annual turnover during the relevant period (period of immediately preceding three consecutive financial years) exceeds Rs. 2 Crore, it shall cease to be entitled to continue as a One Person Company.

vi. Such One Person company will have to convert itself into a Private or a Public Limited company within 6 months of the date on which its paid up share capital is increased beyond Rs. 50 lac

**or**

the last day of the relevant period during which its average annual turnover exceeds Rs. 2 Crore or the close of the financial year during which its balance sheet total exceeds one crore rupees, as the case may be.

**3. Signing of Memorandum & Articles** *(Section 7(1)(a))*

i. Where the subscriber to the memorandum is a Body Corporate, it shall be signed by director, officer or employee of the body corporate duly authorized in this behalf by a Board Resolution and if such 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.

ii. In either case, the person so authorized shall not, at the same time, be a subscriber to the memorandum and articles of Association i.e. an authorized representative of such body corporate/ LLP cannot himself be a member of such Company.

iii. Where the subscriber to the Memorandum is a foreign national residing outside India then the following compliance is required

| Sl. | Resident of | Compliance |
|---|---|---|
| 1. | In a country in any part of the Commonwealth | Signature, Address on MOA & AOA and proof of Identity to be notarized by a Notary Public of that Country |
| **2.** | In a country which is a party to the Hague Apostille Convention,1961. | 1. Signature, Address on MOA & AOA and proof of Identity to be notarized by a Notary Public of the Country of his origin and<br>2. be duly apostillised in accordance with the said Apostille Convention |
| **3.** | In a country outside the Commonwealth and not a party to the Hague Apostille Convention, 1961 | 1. Signature, Address on MOA & AOA and proof of Identity to be notarized by a Notary Public of that Country.<br>2. Certificate of Notary shall be authenticated by a diplomatic/Consular officer or where there is no such officers by any of the officials mentioned in Sec.6 of the Commissioners of Oaths Act, 1889 |
| **4.** | Foreign National intending to incorporate a company | The foreign national must have a valid Business Visa<br>*In case of Person is of Indian Origin or Overseas Citizen of India, requirement of business Visa will not be applicable* |

iv. 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

v. If the subscriber is already a director or promoter of a company(s), the following details will have to be mentioned:

a. Name of the company
b. CIN
c. Whether interested as a director or promoter.

**4. Companies with Charitable Objects, etc.** *(Section 8)*

i. The Registrar has been delegated powers to issue license to such persons/association of persons desirous to form a company with Charitable objects.

ii. **The application for License shall be accompanied by the following documents:**

a. Draft MOA & AOA of proposed company

b. Declaration by an Advocate, CA, CWA or CS in practice that the draft MOA that the draft memorandum and articles of association have been drawn up in conformity with the provisions of section 8 and rules made thereunder.

c. Estimate of the annual income and expenditure of the proposed company for the next 3 years, specifying the sources of the income and the expenditure plans;

d. a declaration by each of the persons making the application

e. a copy of the board resolution / members' resolution.

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

a. The applicant shall have to publish a notice and send a copy to Registrar in :
   i. An English newspaper & vernacular newspaper of the state in which the registered office is situated,

   ii. On the websites notified by the Central govt.

b. The Registrar shall, after considering the objections, if any, received by it within 30 days from the date of publication of notice, and after consulting any authority, regulatory body, as it may, in its discretion, decide whether the license should or should not be granted.

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

a. By passing a Special Resolution at the General Meeting of the Company and the explanatory statement annexed to the notice of such meeting will set out in detail the reasons for opting for such conversion.

b. 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.

c. The company shall file an application with the **Regional Director** with the fee 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.

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

e. Within one week from date of submitting application to RD , the company will publish a notice in:

   i. An English newspaper & vernacular newspaper of the state in which the registered office is situated,

   ii. On the websites notified by the Central govt.

f. 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 :
   i. Chief Commissioner of Income Tax having jurisdiction over the company,
   ii. Income Tax Officer who has jurisdiction over the company,
   iii. the Charity Commissioner, the Chief Secretary of the State in which the registered office of the company is situated,
   iv. any organisation or Department of the Central Government or State Government or other authority under whose jurisdiction the company has been operating.

   v. ***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.***

g. The Board of directors shall give a declaration 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.

h. NOC from such authority must be obtained and submitted to the RD from which the company has obtained any special status, privilege, exemption, benefit or grant(s).

i. 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

j. Compliance Certificate from practicing CA, CS or CWA certifying that provisions under the section and rules have been complied, must be attached with the application.

k. 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

l. 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.

m. On receipt of the approval of the Regional Director, the company shall convene a general meeting of its members to pass a special resolution for amending its MOA & AOA and file certified copy of approval from

RD, amended MOA & AOA and a declaration by the directors that the conditions, if any imposed by the Regional Director have been fully complied with.

**5. Declaration at the time of commencement of business** *(Section 11(i)(a))***:**

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

**6. Verification of Registered office** *(Section 12 (2))*

i. For the purpose of verification of Registered office following documents will have to be attached with the form required for verification:

a. Registered document of the title of the premises of the registered office in the name of the company

**or**

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

b. 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**

Document of connection of any utility service not older than 2 months.

ii. **The list of all other companies with their CIN, having the same unit/tenement/premises as their registered office address will have to be mentioned in the form.**

**7. Alteration of Memorandum by change of name.**

Change of name shall not be allowed to a company which has defaulted in filing :

i. its Annual Returns or Financial Statements or
ii. any document due for filing with the Registrar or
iii. which has defaulted in repayment of matured deposits or debentures or
iv. interest on deposits or debentures.

**8. Shifting of registered office within the same State** *(Section 12(5))*

i. An application to the Regional Director seeking confirmation for shifting the registered office within the same state will have to be filed and the Company shall one month before filing such application:

   a. publish a notice, in a daily newspaper in English and in the principal language of that district in which the registered office of the company is situated.

   b. serve individual notice on each debenture holder, depositor and creditor of the company.

ii. In case no objection is received by the Regional Director within 21 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 .

iii. 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.

**9. Shifting of registered office from one State to another State** *(Section 13(4))*

i. An application to the Central Government will have to be filed along with the relevant documents.

ii. A list of creditors and debenture holders (along with their names, addresses & the nature and respective amounts due to them in respect of debts, claims or liabilities) shall be filed atleast 1 month preceding the date of filing of application.

iii. the applicant company shall file an affidavit, signed by the CS of the company, if any and not less than 2 directors of the company, one of whom shall be a MD, 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 .

iv. An affidavit from the directors of the company will be attached with the application that no employee shall be retrenched as a consequence of shifting of the registered office from one state to another state.

v. The company shall at least 14 days before the date of hearing:

   i. publish a notice, in a daily newspaper in English and in the principal language of that district in which the registered office of the company is situated.

   ii. serve by registered post with acknowledgement due, individual notice on each debenture holder, depositor and creditor of the company.

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

   iv. 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

   v. 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.

   vi. 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.

   vii. 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 with the Registrar of each of the States within thirty days from the date of receipt of certified copy of the order.

**10. Change of objects for which money is raised through prospectus** *(Section 13 (8))*

i. Special Resolution is required to be passed through postal ballot and the notice in respect of the resolution for altering the objects shall contain the detailed justification with regard to alteration/change in the objects.

ii. An advertisement giving details of the resolution to be passed for change in objects shall be made in Form which shall be published simultaneously with the dispatch of postal ballot notices to shareholders and shall also be placed on the website of the Company.

**11. Service of documents** *(Section 20 (1)) :*

i. "electronic transmission" means a communication delivered by–

a. Fax or email when directed to the fax number or email address, respectively which the company or the officer has provided from time to time for sending communications to the company or the officer respectively;

b. 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

c. other means of 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

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

ii. 'courier' means a document sent through a courier which provides proof of delivery

# Chapter VI: Charges

## 1. Registration of Charge *(Section 77 (1))*

i. The particulars of the charge together with a copy of the instrument, if any, creating or modifying the charge shall be filed with the Registrar, duly signed by the company and the charge holder along with the fee within a period of 30 days from its creation.

ii. If the company fails to register a charge within the period of 30 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 along with additional fee

iii. a charge created for the purpose of securing any issue of deposits has been included in the list of charges for which registration is required.

iv. No charge by way of hypothecation of a motor vehicle shall require registration unless the financier, so requires. However such fact shall be disclosed in the Balance sheet of the Company.

## 2. Verification of Charge *(Section 77, 78, 79)*

| Sl. | Property | Procedure |
|---|---|---|
| a. | Where the instrument or deed relates solely to the property situated **outside India** | Copy shall be verified by a certificate stating that it is a true copy issued :<br>i. under the seal of the Company or;<br>ii. under the hand of any director or company secretary of the company or;<br>iii. an authorised officer of the charge holder or;<br>iv. under the hand of some person other than the company who is interested in the mortgage or charge |
| **b.** | where the instrument or deed relates, whether wholly or partly, to the **property situated in India,** | Copy shall be verified by a certificate stating that it is a true copy issued :<br>i. under the hand of any director or company secretary of the company or;<br>ii. an authorised officer of the charge holder |

**3. Condonation of delay by Registrar.** *(Section 77(1))*

i. The Registrar may allow the registration of a charge after 30 days but within a period of 300 days of such creation of charge on payment of additional fee after being satisfied that the company had sufficient cause for not filing the particulars and instrument of charge, if any.

ii. 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.

iii. These provisions shall apply mutatis mutandis to the registration of charge on any property acquired subject to such charge, modification of charge

**4. Condonation of delay by the Central Government.** *(Section 87)*

If the instrument creating, modifying or satisfying a charge is not filed within 300 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 along with fee.

**5. Satisfaction of Charge** *(Section 82(1))*

i. a company shall within 30 days from the date of the payment or satisfaction in full of any charge give intimation of the same to the Registrar along with the fee.

ii. 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.

**6. Other Rules with respect to Charges:**

i. The particulars of charges maintained on the MCA portal shall be deemed to be the register of charges

ii. The register shall be open to inspection by any person on payment of fee


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iii. every company shall keep at its registered office a register of charges 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

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

v. 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.

vi. 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.

## Chapter VIII: Declaration and Payment of Dividend

1. **Payment of Dividend in case of inadequacy of profits** *(Section 123(1))*

   i. A company may declare dividend out of the accumulated profits earned by it in previous years **and transferred by it to the reserves** subject to the following conditions:

      a. Rate of Dividend shall not exceed the average dividend rates in past 3 years.

      b. Total amount so drawn from the accumulated profits should not exceed 10% of the sum of Paid up share capital & Free Reserves.

      c. The amount so drawn shall be utilized to set off losses incurred in the financial year before any dividend in respect of preference or equity shares is declared.

      d. Balance of reserves after such withdrawal should not fall below 15% of paid up share capital

      e. A company shall not 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.

2. **Statement of Unpaid/Unclaimed Dividend** *(Section 124(2))*

   i. A company **within 90 days** of making any transfer to Unpaid Dividend Account shall prepare a statement of the same in pdf format and place it on its website and on any other website approved by the Central Government which shall be accessible free of charge and readable and made convenient for printing.

   ii. A software for accessing such statement will also have to be provided free of cost 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.

   iii. Proper search facility shall, by name, will have to be provided on the web-site to search the entries from the above stated statement.

   iv. Such statement shall appear year wise/for each declaration of Dividend till the fund is transferred to IEPF.

3. **Statement of Unpaid/Unclaimed Dividend to be furnished to IEPF** *(Section 124(5))*

   i. The amount transferred to unpaid dividend account which remains unclaimed for a period of 7 years from the date of such transfer shall be transferred to IEPF along with interest accrued (if any)

   ii. Such remittance shall be made into specified branches of SBI/any other nationalized bank/through electronic mode along with a Challan within a period of 30 days of the amount becoming due.

   iii. One copy of such duly stamped Challan evidencing deposit of the amount into the Fund and a statement containing the details of such transfer shall be filed by the company with the authority administering the IEPF duly certified by practicing CS/CA/CWA.

   iv. The authority shall maintain a register of each company and reconcile the amount so remitted and collected with the concerned designated bank on a monthly basis and such designated bank will furnish an abstract of such receipts during the month to the Authority within 7 days of the close of every month.

   v. The Company will have to preserve the records containing the details of the beneficiaries of unclaimed dividend for a period of 8 years from the date of such transfer to IEPF open for inspection by the authority governing IEPF.

   vi. These provisions will also be applicable for the transfers made to IEPF for the following unclaimed amounts:

      a. Application money received for allotment of securities due for refund along with interest accrued therein.
      b. Matured deposits (other than banking companies) and debentures along with interest accrued therein.
      c. Sale proceeds of fractional shares.
      d. Redemption amount of preference shares.

4. **Transfer of Shares on which unclaimed dividend has been transferred to IEPF** *(Section 124(6))*

All shares in respect of which unpaid or unclaimed dividend has been transferred shall also be transferred by the company in the name of IEPF in the following manner:

i. **For shares held in electronic mode**:

   a. All shares in which dividend warrants have not been **encashed for any of the years** in the preceding 7 years will be eligible for transfer to IEPF

   b. The Board will authorize the company secretary or any other person to sign the necessary documents for executing all documents in this respect.

   c. These shares will have to be credited to an IEPF Suspense Account (name of the company) to be opened with one of the Depository Participants within 30 days of such shares becoming due to be transferred to IEPF in the following manner:

      - The CS/person authorised by the Board shall sign and execute Delivery Instruction slips of the depository participants where the shareholders had their accounts, on behalf of such shareholders for transfer in favour of IEPF Suspense Account.

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

ii. **For shares held in physical mode**:

   a. The CS/person authorised by the Board shall make an application on behalf of the concerned shareholders, to the company, for issue of duplicate share certificates the word "duplicate" shall be stamped or punched in bold letters across the face of the share certificate.

   b. Particulars of every share certificate issued as above shall be entered forthwith in a Register of Renewed and Duplicate Share Certificates and the CS/ person authorised by the Board shall sign the necessary securities transfer Form.

   c. 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 IEPF.

iii. The company will send a statement to IEPF containing details of such transfer duly certified by a practicing CS/CA/CWA

iv. The voting rights on shares transferred to IEPF shall remain frozen until the rightful owner claims the shares.

v. All benefits accruing on such shares e.g. bonus shares, split etc. shall also be credited to such IEPF suspense account.

vi. Such shares will be transferred back to the claimants as and when he/she approaches IEPF in the following manner:

a. IEPF will refer to the respective company for verification of the details and documents of the claimant against the details of shares.

b. After proper verification of the claim and identity of the claimant by the company, the Fund shall:

- Credit the shares which are lying with depository participant in IEPF suspense account 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.

vii. On the event of delisting of shares IEPF shall surrender shares on behalf of the shareholders in accordance with the SEBI (Delisting of Equity Shares Regulations), 2009 and the proceeds realized shall be credited to the account of the shareholder.

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

**5.** The governing authority of IEPF may *suo motu* call upon any company to pay the amount due to it and on failure of such payment the governing authority shall report the same to Central Government. Penal provisions for non compliance extends to Rs.5000 and if the contravention is a continuing one with further fine of Rs. 500 for every day of such failure to pay.

**6. Procedure for claiming refund from IEPF** *(Section 125(3))***:**

i. A person can make application himself or through his POA holder accompanied by :

   a. an Indemnity Bond on a Non Judicial Stamp paper of value as applicable (not applicable if the applicant is a Central/State Govt.; Public Financial institution) if the amount claimed is less than Rs. 5000/-

   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

   e. Succession certificate/ probate / letter of administration 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.

ii. 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.

iii. For refund of any amount from the General Revenue Account of the Central Government/ IEPF which had been transferred to the account under section 205A (5)/ 205 C of the Companies Act, 1956 and which has been transferred to the Fund under section 125 (2)(d)/(e) shall be forwarded by the Authority to the concerned Registrar or company for verification respectively.

iv. After certification of the title of the claimant to the amount claimed, the Authority shall issue a payment order and cause a note to be made of all payments made in its records.

v. An application received for refund of any claim shall be disposed of by the Authority within 30 days of receipt of application.

## Chapter IX: Accounts of Companies

### 1. Maintenance of Books of Accounts in Electronic mode:

i. The Books of Accounts and relevant records/information can be maintained in electronic mode and shall remain accessible in India usable for subsequent reference *(Section 128 (1))*

*ii.* "Electronic mode" **includes** an electronic record as defined in Section 2(1)(t) of the IT Act, 2000 which defines "electronic record" as *data, record or data generated, image or sound stored, received or sent in an electronic form or micro film or computer generated micro fiche.*

iii. The Books of Accounts shall be retained 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.

iv. The information contained in the electronic records shall be:
   a. complete and unaltered
   b. capable of being displayed in a legible form
   c. 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.

v. The Board of Directors can inspect the Summarized books of accounts of the company maintained outside India which shall be sent to the Registered office on monthly/quarterly intervals as decided by the Board. *(Section 128(3))*

vi. Any other financial information maintained outside the Country shall be provided by the Company to the director himself *(not by or through his power of attorney holder or agent or representative)* within 15 days of the written request (stating the details sought and reasons therein) made by them.

vii. Classes of companies as notified by the Central Government will have to mandatorily file the financial statements in XBRL mode. *(Section 129(1))*

**2. Consolidation of Accounts:**

i. A statement containing the salient features of the financial statements of a company's subsidiary or subsidiaries, associate company and joint venture shall be in filed.

ii. Consolidation of financial statements of the company shall be made in accordance with the Accounting Standards.

iii. If under 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 as under Schedule III of the Act.

**3. Recasting of Accounts** *(Section 131)***:**

i. The company shall apply to the Tribunal within 2 weeks of the decision taken by the Board to recast its accounts.

ii. In case the majority of the directors of the company or the auditor of the company has been changed immediately before the decision to recast the accounts, the company shall disclose such fact in its application.

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

iv. A certified copy of the Order of the Tribunal shall be filed with the Registrar within 30 days of the date of receipt.

v. On approval of Tribunal, a General Meeting may be called and the notice of such general meeting along with reasons for change in Financial Statements may be published in Newspaper in English and in vernacular language.

vi. 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.

vii. 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

viii. the previous financial statement or report may be replaced by revised financial statement or revised report of the board, and supplemented by:
   a. A summarized 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.

ix. The word "revised" shall be prefixed prominently on all the documents forming part of the revised financial statements / revised board report.

x. Functions of the Auditor pursuant to order of Tribunal includes 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 *(Section 131(3)(b))*

xi. The proposed revision **shall be presented to the directors who authenticated the original financial statements** or Report of the Board and

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.

xii. 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.

xiii. 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.

xiv. 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.

xv. The Board shall send a copy of the revised financial statements and the revised auditor's report to the:

a. members,
b. in case of a listed company, to the stock exchange(s) and other regulatory authorities

xvi. The Board shall convene a 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.

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

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

**4. Board's Report** *(Section 134)*

i. The Boards Report shall be prepared on the basis of Standalone Financial Statements.

ii. The Report must contain a separate section wherein a report on the performance and financial position of each of the subsidiaries, associates and joint ventures is presented.

iii. Form has been prescribed (9.5) under which particulars of contracts or arrangements with related parties will have to be disclosed. [Sec.134(3)(m)]

iv. The Board's report shall contain the following details with respect to:

**a. Conservation of Energy:**

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:**

i. Efforts, made towards technology absorption.
ii. Benefits derived as a result of the above efforts, e.g., product improvement, cost reduction, product development, import substitution, etc.

iii. Information w.r.t. details, year of import, status of technology absorption, the area where absorption has not taken place and reasons therefore for any technology imported during the last 3 years.
iv. Expenditure incurred on Research and Development.

c. **Foreign Exchange Earnings and outgo**

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

v. **Every Listed company and every other public company having a paid up share capital of Rs. 25 crore or more will have to include 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.** *[Section 134 (3)(p)]*

vi. **Additional disclosures** to be provided as per the rules as under:

a. financial summary/highlights
b. change in the nature of business, if any;
c. Details of Directors /KMP who were appointed or have resigned during the year.
d. Names of companies which have become or ceased to be its Subsidiaries, joint ventures or associate companies during the year along with reasons.
e. Details relating to Deposits.
f. Details of significant and material orders passed by the Regulators/ courts/tribunals impacting the going concern status and company's operations in future.

vii. Disclosure of CSR policy in the Board's report and on the company's website.

viii. **Financial statements may be sent by all listed companies and public companies having a net worth of more than 1 crore rupees and turnover of more than 10 crore rupees in the following manner:**

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

b. by dispatch of physical copies by any other recognized mode of delivery in all other cases.

**5. Internal Auditor:**

i. Every listed company **or** every public company having a paid up capital of Rs. 10 crore or more **or** every public company which has any outstanding loans or borrowings from banks/ PFI's exceeding Rs. 25 crore **or** which has accepted deposits of Rs. 25 crore or more at any point of time during the last FY will be required to appoint an Internal Auditor or a firm of Internal Auditors.

ii. An Internal Auditor shall be a CA, CWA or such **other professional as may be decided by the Board**

iii. 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.

## Chapter IXA

## Corporate Social Responsibility Rules u/s 135 of the Companies Act, 2013

1. These rules will be applicable from the Financial Year 2014-2015 onwards.

2. The net profit for the purpose of calculation of CSR spends has been specified as **"net profit before tax"** as per books of account. ***It may be noted that profit arising from branches outside India will not be included.***

3. The minimum CSR spend, i.e. 2% of the net profits will be calculated on average net profits made by the company during every block of 3 years in respect of first CSR reporting. Net Profit for the first reporting year shall mean average net profit of preceding 3 financial years ending March 31, 2014.

4. **Tax treatment of CSR spend will be governed as per the IT Act or rules as may be notified by CBDT**.

5. The company will have to constitute a CSR Committee which will prepare a CSR policy in which it will have to include the following:

    a. Projects and programmes that are to be undertaken

    b. A list of CSR projects/programmes which a company plans to undertake during the implementation year , specifying

        i. Modalities of execution in the areas/sectors chosen and
        ii. Implementation schedules for the same.

6. **CSR Policy will provide that any surplus out of CSR activities will not be part of the business profits of the company.**

7. The company will have to specify the amount of CSR corpus which will include:

    a. 2% of Avg. Net Profits
    b. Income arising there from
    c. Surplus arising out of the CSR activities.

8. In order to undertake CSR activity, **a company can set up its own trust or society** or foundation or any type of entity of India. Such entity or trust has to facilitate the implement of CSR policy of the company.

9. The contributing company will have to specify the projects/programmes to be undertaken by such an organization and will have to establish a monitoring mechanism for the same.

10. **The company can also implement the CSR programmes through the trust / societies/ Section 8 Companies not found by the company** provided that such trust or entities have established **track record of at least 3 years** in carrying on activities in related areas.

11. The company **may collaborate or pull resources with other companies** to undertake CSR activities and the expenditure incurred on such basis will also clarify for computing the CSR spending.

12. CSR activities undertaken within India would only be taken into consideration.

13. **Any CSR activities which are not merely for the benefit of the employees and their family are also included in CSR activity**.

14. The company is required to give its CSR report in the Director's Report in the prescribed manner and also disclose the same on its website.

15. In case the company has failed to spend the 2% of the Average Net Profits of the last 3 financial years, it will have to provide the reasons for not spending the amount.

16. 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 will have to be included in such report.

# Chapter X: Audit & Auditors

1. **Appointment of Auditors**

   a. The Audit Committee (in its absence, the Board) shall take into consideration the consideration; qualifications and experience of the person proposed to be appointed as an auditor and whether these are commensurate with the size of the Company. It shall also consider the completed and pending proceedings against the auditor before the ICAI/ NFRA/ Tribunal or any court of law.

   b. The Audit Committee shall recommend the name of an individual or a firm as auditor to the Board. If there is no audit committee, the Board shall consider and recommend an individual or a firm as auditor to members in the AGM for appointment.

   c. The members at the AGM shall appoint auditor of the company who shall hold office from the conclusion of that meeting **till the conclusion of the 6$^{th}$ AGM, counting the current meeting as the first.**

   d. The Auditor shall be subject to the **ratification** by members at every AGM.

   e. The auditor will have to submit a certificate that he/firm is eligible for appointment and is not disqualified under the Companies Act, Chartered Accountants Act and the proposed appointment is within the term / limit under this act.

2. **Rotation of Auditors**

   a. The class of companies in which the auditor will be rotated is not yet prescribed.

   b. **Auditor rotation is being applied with retrospective effect**. The period for which the auditor has been holding office as auditor prior to the commencement of the Act shall be taken into account in calculating the period of 5 consecutive years or 10 consecutive years, as the case may be.

   c. A break in term for a continuous period of 5 years would only be considered as fulfilling the requirement of eligibility.

d. **Companies cannot rotate from one network firm of auditor to another or network firm of audit firms or is operating under the same trade mark or brand**.

3. For removal of the auditor before expiry of his term an application (along with fee) will have to be filed to Central government within 30 days from the date on which the special resolution was passed in general meeting with respect to removal of auditor. An auditor will have to file a statement under Form 10.2 if he has resigned from the company.

4. **Disqualification of Auditor** *(Sec. 141 (3))*

   a. A relative of an auditor may hold **securities of face value** or interest in the company of **maximum Rs. 1 Lac.**

   b. A person who/whose relative/partner has given a **guarantee or provided any security in connection with the indebtedness of any third person** to the company, its subsidiary, its holding or associate company or a subsidiary of such holding company, **in excess of 1 Lac rupees** shall not be eligible for appointment as an auditor.

   c. a person or a firm who, whether directly or indirectly, has **business relationship** with the company, or its subsidiary, or its holding or associate company or subsidiary of such holding company or associate company of such nature as may be prescribed

   The rules define Business Relationship as: *"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.*

5. **Auditors' Report** *(Sec 143(3)(j))*

   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 IEPF** by the company.

6. **Duties and powers of the company's auditor with reference to the audit of the branch and the branch auditor** *(Sec 143(8))*

   a. The Branch Auditor shall report to the Company Auditor.

   b. Reporting of fraud by auditor shall also extend to such branch auditor to the extent it relates to the concerned branch.

7. **Reporting of Frauds by auditor** *(Sec 143(8))*

   a. Auditor to report offences to Central Government within 30 days of his knowledge or information involving fraud which is likely to **materially affect** the company, is being or has been committed against the company by its officers/ employees with a copy marked to the Audit Committee/ Board as the case may be.

   b. "**Materiality**" has been defined as:

      i. fraud(s) that is or are **happening frequently** or

      ii. fraud(s) where the amount involved or likely to be involved is not less than **5% of net profit** or **2% of turnover** of the company for the preceding financial year

   c. In all other cases, auditors shall send a report in writing to the audit committee/ Board if there is no Audit Committee.

   d. The audit committee/ Board, as the case may be, shall reply to the auditors in writing as to steps taken by it in addressing the issues of fraud, including systemic issues.

   e. In case the audit committee/ Board, as the case may be, are not taking action **or** if the auditor is not satisfied with the action taken, he may report (under his letterhead duly signed) to the Central Government even if the fraud is not material in nature.

8. **Remuneration of Cost Auditor** *(Sec 148(3))*

   a. Companies Required to constitute an Audit Committee:

      i. 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

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

   b. Companies 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

## Chapter XI: Appointment & Qualifications of Directors

1. **Woman Director:** Every **listed company** (within 1 year from commencement of second proviso to Section *149 (1)*) and every **other company having a paid up capital of Rs.100 crore** or more (within 3 years from commencement of second proviso to Section *149 (1)*) **shall appoint atleast one Woman Director.**

2. **Independent Directors:**

   a. As u/s 149 (4) the **following public companies shall have 1/3rd of total number of directors as Independent Directors** which have:

      i. Paid up share capital of Rs. 100 crore or more **or**
      ii. Outstanding loans or borrowings or debentures or deposits, exceeding Rs. 200 crore.

   b. The above provisions 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.

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

   d. 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 *(Sec. 149(6)(f))*

   e. The Directors shall furnish a statement in the Directors Report (after appointment of the Independent Director) that in their opinion the independent director possesses appropriate balance of skills, experience and knowledge, as required.

3. **Data Bank of Independent Directors:**

   a. As according to Sec. 150(1) anybody/institute/association authorized by the Central Government shall create and maintain a data bank with complete details of eligible persons willing to be appointed as Independent Directors which shall be displayed on the website of MCA/other website approved by Central Govt.

   b. Such data bank shall contain a disclaimer that a company must carry out its own due diligence before appointment of any person as an independent director and the body/ Central Government creating and maintaining the databank shall not be held responsible for the person/ actions of the persons chosen for appointment on its board as independent director out of such databank.

4. **Small Shareholders' Director** *(Section 151)*

   a. A listed company may *suo motu* or upon the notice of 500 members or $1/10^{th}$ of the total number of small shareholders, (whichever is lower) elect a small shareholders' director from amongst the small shareholders.

   b. Procedure for appointment of Small Shareholders Director by such small shareholders:

      i. Members proposing to elect such small shareholders director shall give 14 day prior notice to the company before the meeting.

      ii. Such notice shall be under the signature of the members specifying their names, address, shares held & folio number and also of the person whose name is being proposed for the post of Small Shareholders director.

      iii. Notice will be accompanied by a statement signed by the proposed small shareholders director stating his DIN, consent and a declaration that he is not disqualified under this act.

      iv. A Small shareholders director will be treated as an Independent director and he shall furnish a declaration that he satisfies the criteria of independence u/s 149 (7).

c. A small shareholders director's office shall not be liable to retire by rotation and the director's tenure shall not exceed a period of 3 consecutive years after which he/she shall not be eligible for appointment.
d. A person cannot be a Small Shareholders Director in more than two companies at a time.

5. Every director shall on or before the appointment shall furnish his consent letter in form 11.2 and the company shall file such consent with Registrar in form 11.8 along with fee *(Section 152(5))*

6. **Director Identification Number** *(Section 153, 154)*

a. Person appointed as director of the company shall make an application electronically in form 11.3 to Central Government with fee along with documents and photograph.

b. The form shall be countersigned digitally by:

i. Practicing Professional namely: CA/CS in practice/CWA or,
ii. CS in full time employment of the company /MD/Director of the company in which the applicant is to be appointed.

c. On the submission of the form on the MCA portal and payment of the requisite amount of fees through online mode:

i. If the form is signed by a practicing professional the system shall, after processing, automatically generate the approved DIN

ii. In other cases a provisional DIN shall be generated by the system and thereafter the Central Government shall decide on the approval or rejection thereof and communicate the same to the applicant within a period of 1 month from the receipt of such application.

iii. If there is any defect in the application the Central Government shall give intimation of such defect or incompleteness, by placing it on the website and by email to the applicant, directing him to rectify such defects or incompleteness by resubmitting the application within a period of 15 days.

iv. If such defect is not rectified then the Central Govt. can reject such application (provisional DIN shall lapse) and inform the applicant either by way of letter by post or electronically or in any other mode.

d. The Central Govt. or RD (Northern Region), Noida or any officer authorised by the RD may, upon being satisfied on verification of particulars or documentary proof attached with the application received from any person, and after giving such person an opportunity of being heard, cancel or deactivate the DIN if:
   i. It is found to be duplicated or
   ii. Obtained in a wrong manner /fraudulent means or
   iii. Death of the Concerned individual
   iv. The individual has been declared as a lunatic/ unsound mind by a competent Court;
   v. If the concerned individual has been adjudicated an insolvent.

e. If there is any change in particulars, the director shall intimate such change in Form 11.5 within a period of 30 days from such change.

f. The form shall be countersigned digitally by Practicing Professional namely: CA/CS in practice/CWA.

g. The DIN cell of the MCA shall also intimate the changes in the particulars of the director to the concerned ROC under whose jurisdiction the registered office of the company(s) in which such individual is a director is situated.

h. The concerned individual shall also intimate such change to the companies in which he is a director within 15 days of such change.

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

7. **Notice of candidature of a person for directorship** *(Section 160 (2))*

The company shall 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 atleast 7 days prior to the General Meeting by:

a. 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** by placing notice of such candidature or intention on the website of the company, if any.

Or

b. Advertise such candidature/ intention, atleast 7 days before the meeting at least once in:
    i. a vernacular newspaper in the principal vernacular language of the district in which the registered office of the company is situated, **and**
    ii. at least once in English language in an English newspaper circulating in that district.

8. **Notice of resignation of director** *(Section 168 (1))*

a. The company shall within 30 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.

b. 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

9. **Register of directors and key managerial personnel** *(Section 170 (1))*

a. Every company shall keep at its registered office a register of its directors and key managerial personnel containing the prescribed particulars.

b. In addition to the details of the directors/ KMP, 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:

    i. the number, description and nominal value of securities
    ii. date of acquisition and the price or other consideration paid
    iii. date of disposal and price and other consideration received
    iv. cumulative balance and number of securities held after each transaction;
    v. mode of acquisition of securities
    vi. mode of holding

vii. whether securities have been pledged or any encumbrance has been created on the securities

10. A return containing the particulars of appointment of director or KMP and changes therein shall be filed with the Registrar along with fee in form 11.8 within 30 days of such appointment or change, as the case may be. *(Section 170 (2))*

## Chapter XII: Meetings of Board and its Powers

1. **Meetings of Board through video conferencing or other audio visual means** *(Section 173 (2))*

   a. A director of the company shall attend, at least one Board meeting in a financial year of the company, **in person**

   b. **Due and Reasonable care** to be taken by Chairperson & Company Secretary, to:

      i. Ensuring sufficient security and identification procedures.

      ii. Ensure availability of proper video conferencing/ other audio visual equipment/facilities for providing transmission of the communications.

      iii. Record the proceedings and prepare the minutes of the meeting.

      iv. Store for safekeeping and marking the tape recording(s) and/or other electronic recording mechanism as part of the records of the company.

      v. Ensure that no person other than the concerned director/authorised participant is attending/have access to the proceedings of the meeting through video conferencing mode/other audio visual means.

      vi. 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.

   c. The **notice of the meeting shall inform the directors regarding attending the meeting through video conferencing/audio visual option** and shall also provide all the necessary information to enable the directors to participate through the abovementioned mode(s).

   d. If the director wishes to participate in the Board Meeting through video conferencing/ audio visual mode :

      i. He 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 **at least 3 days prior** to the scheduled date of the meeting unless waived-off by the Chairperson.

**ii.** 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.**

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

e. A **roll call shall be taken at the beginning by the Chairperson** when the meeting is held through video conferencing and every director participating through such means shall state the following, for the record:

i. **Name** of the director and the **location** from which he is participating.
ii. That he can **completely and clearly see, hear and communicate** with the other participants.
iii. That he has **received the agenda** and all the relevant material for the meeting.
iv. That no one other than the concerned director is attending or having access to the proceedings of the meeting

f. After the roll call, the Chairperson/ 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 (Director participating through video conferencing will be counted for this purpose)

g. The **roll call shall also be made at the conclusion** of the meeting and at the re-commencement of the meeting **after every interval.**

h. The scheduled venue of the meeting as mentioned 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.

i. 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.

j. When such **registers are required to be signed by the directors**, they 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.

k. Every participant shall **identify himself for the record before speaking on any item of business on the agenda.** If the director fails to identify himself, the Chairperson/ 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.

l. If a statement of a director in the meeting through audio visual means is interrupted or garbled, the Chairperson/company secretary shall request for a repeat or reiteration by the director.

m. **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.**

n. 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.**

o. The Chairperson shall announce the summary of the decisions taken in that meeting and the names of the directors who have assented to or dissented from those decisions at the end of the meeting. **The video recording of this part of the meeting shall form part of the secretarial records and be preserved by the company**.

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

q. The **draft minutes** of the meeting shall be **circulated** among all the directors within **7 days** of the meeting either in writing or in electronic mode as may be decided by the Board.

r. Every director who **attended** the meeting, whether personally /through video conferencing **shall confirm or give his comments**, about the accuracy of recording of the proceedings of that particular meeting in the draft minutes, **within 7 days** of receipt of the draft minutes failing which his approval shall be presumed.

s. The following matters **shall not be dealt through video conferencing** *(Section 173 (2))* :
   i. Approval of the annual financial statements; and
   ii. Approval of the Board's report

2. A **resolution may be passed through circulation** if the draft resolution is circulated to the directors together with the necessary papers for seeking their approval, **by electronic means which may include E-mail or fax.** *(Section 175(1))*

3. Constitution of **Nomination & Remuneration Committee mandatory** for every **Listed Company** and for the following class of **public companies** *(Section 177(1) & 178 (1))*:

   a. Having a paid up share capital of Rs. 100 crore or more

   **or**

   b. Having in aggregate, outstanding loans or borrowings or debentures or deposits exceeding Rs. 200 crore.

4. **Vigil Mechanism** *(Section 177(9))*

   a. **Following companies** shall establish a vigil mechanism for directors/ employees to report genuine concerns:
      i. Listed Companies.
      ii. Companies which accept deposits from the public; and
      iii. Companies which have borrowed money from banks and PFI's in excess of Rs. 50 crore.

   b. **Operation of Vigil Mechanism**:

      i. **By Audit Committee**: in those companies in which constitution of Audit Committee is mandatory. 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.

      ii. **Nominated Director**: In companies not required to constitute Audit Committee, the board of directors to nominate a director to play the role of audit committee

c. This mechanism shall provide for adequate safeguards against victimization of employees and directors who avail of the mechanism.

d. The mechanism shall also provide for direct access to the chairperson of the Audit committee/ director nominated to play the role of audit committee, as the case may be, **in exceptional cases**.

e. Such mechanism once established, shall be appropriately communicated within the organization.

f. In case of **repeated frivolous complaints** being filed by a director/ employee, the audit committee/nominated director may take suitable action against the concerned director or employee including reprimand.

5. **Powers of the Board** *(Section 179(3)(k))*

The following transactions can only be undertaken by passing a Board Resolution at the Board Meeting:

a. **Political contributions;**
b. Appointment of a director in case of **casual vacancy**;
c. Entering into a **joint venture**/technical or financial collaboration/any collaboration agreement;
d. Commencement of a **new business**;
e. **Shifting the location** of a plant or factory or the registered office;
f. Appointment / removal of **KMP and senior management personnel** one level below the KMP;
g. Appointment of **internal auditors**;
h. Adoption of **common seal**;
i. Taking note of the disclosure of **director's interest** and shareholding;
j. **Sale of investments** held by the company (other than trade investments), constituting 5% or more of the paid -up share capital and free reserves of the investee company;
k. Acceptance of **public deposits** and related matters and;
l. Approval of quarterly, half yearly and annual **financial statements.**

6. **Disclosure of Interest by a Director** *(Section 184(1))*

a. Every director shall disclose his concern/interest in any company or bodies corporate (including shareholding interest), firms or other association of individuals, by giving a notice in writing in Form No. 12.1.

b. The Director shall disclose the notice of interest at the meeting held immediately after the date of the notice.

c. All notices shall be kept at the registered office. Such notices shall be preserved for a period of **8 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/any other person authorized by the Board for the purpose.

7. **Loan and investment by a company**

a. Following companies shall not 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 SEBI *(Section 186 (6))* :

i. A company registered u/s 12 of the SEBI Act, 1992 (Registration of stock brokers, sub-brokers, share transfer agents, etc) and

ii. Also covered under such class or classes of companies which may be notified by the Central Government in consultation with SEBI.

b. A company giving loan or giving guarantee or providing security or making an acquisition shall, maintain a register in Form No. 12.2 from the date of its registration, and enter therein separately, the particulars of loans and guarantees given, securities provided and acquisitions made *(Section 186 (9))*.

i. Entries to be made chronologically within 7 days of such transaction

ii. Register to be kept at Registered Office of the Company and preserved **permanently** in the custody of the secretary of the company or any other person authorised by the Board for the purpose

iii. 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.

c. Extracts of such register may be furnished to any member of the company on payment of fee prescribed in the AOA of the company or Rs.10/- per page whichever is lower. *(Section 186 (10))*

d. **Special Resolution in General Meeting required if the:**

   i. Aggregate of the loans and investment so far made,
   ii. The amount for which guarantee or security so far provided to or in all other bodies corporate,
   iii. Along with the investment, loan, guarantee or security proposed to be made or given by the Board,

   **Exceed 60% of its paid-up share capital, free reserves and securities premium account or 100% of its free reserves and securities premium account, whichever is more.** *(Section 186 (12))*

e. A resolution passed at a general meeting to give guarantee **may specify the total amount** up to which the Board of Directors is authorised to give guarantee and 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

8. **Investments of company to be held in its own name** *(Section 187(3))*

   a. Register to be maintained in Form 12.3

   b. **Entries** of the particulars of investments in shares or other securities beneficially held by the company but which are not held in its own name to be added **chronologically.**

   c. Record of **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

   d. Record whether such investments are held in a third party's name for the time being or otherwise

e. Register to be kept at Registered Office of the Company and preserved permanently in the custody of the secretary of the company or any other person authorised by the Board for the purpose

f. 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.

9. **Related Party Transactions (RPT)** *(Section 188 (1))*

a. **Notice of Board meeting** where such RPT is proposed to be moved shall disclose the following:

i. Name & nature of Relationship of the related party
ii. Nature, duration of the contract and particulars of the contract/ arrangement;
iii. Material terms of the contract/arrangement including the value, if any;
iv. Any advance paid or received for the contract or arrangement, if any;
v. Any other information relevant or important for the Board to take a decision on the proposed transaction.

b. If 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

c. No contract or arrangement, shall be entered into except with the **prior approval of the company by a Special Resolution** in case of following companies:

i. Paid up share capital of **Rs. 1 Crore** or more; or

ii. Where the transaction/transactions to be entered into individually or taken together with previous transactions during a FY, **exceeds 5% of the annual turnover or 20% 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 Section 188 (1) (a) to (e)

iii. Where the transaction/transactions to be entered into relates to appointment to any **office or place of profit** in the company/ its subsidiary company/ associate company at a monthly remuneration **exceeding Rs. 1 Lac** as mentioned in Section 188 (1)(f)

iv. Where the transaction/transactions to be entered into is for a **remuneration for underwriting the subscription** of any securities or derivatives thereof of the company **exceeding Rs. 10 Lac** as mentioned in Section 188 (1)(g)

v. 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

d. **Contents of explanatory statement to be annexed to the notice of a general meeting**

i. Name of the related party ;
ii. Name of the director / KMP who is related, if any;
iii. Nature of relationship;
iv. Nature, material terms, monetary value and particulars of the contract or arrangement;
v. Any other information relevant or important for the members to take a decision on the proposed resolution.

10. **Register of contracts or arrangements in which directors are interested.** *(Section 189 (1))*

a. Maintenance of one or more registers in Form No. 12.4,

b. Entries of particulars to be made of company or companies or bodies corporate, firms or other association of individuals, in which any director has any concern or interest

c. The particulars of the company or companies or bodies corporate in which a director himself or in association with any other director holds **2% or less** of the paid-up share capital **would not be required to be entered in the register**

d. Entries of contracts or arrangements to be made with a body corporate or firm or other entity in which any director is, directly or indirectly, concerned or interested

e. Entries of contracts or arrangements with a related party with respect to RPT's

f. Entries to be made chronologically and shall be authenticated by the secretary of the company or by any other person authorized by the Board for the purpose.

g. Register to be kept at Registered Office of the Company and preserved permanently in the custody of the secretary of the company or any other person authorised by the Board for the purpose

h. Extracts of such register may be furnished to any member of the company on his request within 7 days upon payment of fee prescribed in the AOA of the company or Rs.10/- per page whichever is lower. *(Section 189 (3))*

11. **Payment to director for loss of office, etc. in connection with transfer of undertaking, property or shares.** *(Section 191 (1))*

a. Particulars and to be disclosed to the members of the company and

b. An Ordinary Resolution to be passed at a general meeting approving the payment of compensation in connection with loss of office, etc. in connection with transfer of undertaking, property or shares.

c. 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 MD/WTD/ Manager of the company shall not exceed the limit as set out under section 202.

d. Payment cannot be made to the a MD/WTD/ 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 there is default in:

i. Repayment of public deposits or payment of interest thereon

ii. Redemption of debentures or payment of interest thereon

iii. repayment of any liability, secured or unsecured, payable to any bank, public financial institution or any other financial institution

iv. 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 /State Government, statutory authority or local authority (other than in cases where the company has disputed the liability to pay such dues); and

v. 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).

## Chapter XVI: Prevention of Oppression & Mismanagement (Class Action Suits)

1. **Number of members who can file an application for class action**. *(Section 245 (3))*

| Sl. | Company | Members Required | Depositors Required |
|---|---|---|---|
| **1** | Company having share capital | 1. 100 Members<br>or<br>10% of total number of members<br><br>*Whichever is less*<br>**or**<br>2. Any member or members singly or jointly holding minimum 10 % of the issued share capital of the company<br><br>*The applicant(s) must have paid all calls & other sums due on shares* | 1. 100 depositors<br>or<br>10% of total number of depositors<br><br>*Whichever is less*<br>**or**<br>2. Any depositor or depositors singly or jointly holding a minimum of 10% of total value of outstanding deposits of the company |
| **2** | Company not having share capital | $1/5^{th}$ of the total number of its members | As above |

2. **Publication of Notice** *(Section 245(5)(a))*

   a. On admission of a Class Action Suit, a public notice shall be issued by the Tribunal, to all the members of the class by:

      i. Publishing the same within 7 days of admission of the application at least once in a vernacular newspaper in the principal vernacular language of the state and at least once in English in an English newspaper circulating in that State

ii. The tribunal will also direct the company to display such notice in its website, if any in addition to the newspaper notice

iii. Such notice shall also be placed on the website of the Tribunal, MCA, concerned ROC and on the website of stock exchanges where the company has any of its securities listed, if any until the application is disposed of by the Tribunal

b. 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.

c. **The public notice shall, contain** the name of the lead applicant, brief particulars of the grounds of application; relief sought etc.

d. 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.

3. An application made to the tribunal shall not be withdrawn without the leave of the Tribunal

4. A copy of every such application shall be served on the concerned company and on such person as the Tribunal directs.

5. A copy of every application made to tribunal shall be served on the RD & ROC.

6. If the Tribunal makes an order involving reduction of share capital / alteration of MOA the provisions of the Act and rules relating to such matters shall apply as the Tribunal may direct.

7. An application for leave to any of the persons (mentioned u/s 243 (1)(b)) as to be appointed or to act as the MD/ other director/ 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.

8. 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.

9. The Tribunal shall give notice of every application made to it under these provisions to the Central Government and shall take into consideration the representations, if any, made to it by that Government before passing a final order.



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