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Useful points and Interpretations about Companies Act, 2013-Part-1

Dear Professional Colleagues,

During the process of decoding new provisions and stipulations of Companies Act, 2013, I have observed below mentioned interpretations about few important topics which affect our day to day corporate working. This write up may be considered as part-1 of its kind. I am sure in future I'll be able to share more such interpretations and practices.

1. Resignation of Director u/s 168 [DIR-11]

As per first proviso to section 168(1), if a director wants to resign, he has to file copy of his resignation letter with reasons of resignation directly with ROC also with Form **DIR.11** under his Digital Signature. It means it will be mandatory for all directors to have Digital Signature sooner or later.

Discussion regarding Form DIR-11 under Companies Act, 2013

I have gone through form **DIR.11** prescribed for the resignation of Director. As per new rule it is duty of resigning director to file **DIR.11** along with his resignation letter. I have 2 observations w.r.t. form **DIR-11** which is to be filed by the director who has resigned from his post:

1. Point no. 6 in form **DIR-11** inquires whether confirmation is received from the company w.r.t. the resignation of Director. As per my understanding if we mention "NO" in the E-form, there will be no issue in future as confirmation of resignation from company is not mandatory u/s 168.
2. Further attachment section of form **DIR-11**, asks for proof of dispatch. Now the question is --- Is there any requirement of formal dispatch through post which generates proof of dispatch? My Answer is "**NO**".

We can use scan copy of "receiving" of resignation letter given by responsible official of the company in case of personal delivery. Further scan copy of printout of resignation E-mail would be enough as proof of dispatch.

This short note is just an opinion and open for discussion.

2. Procedural Applicability of KMP provisions to Private Companies

As per my understanding of rules Private Companies are excluded from sub-section (1) of section 203. Hence private companies are not required to appoint KMP. Sub-section (1) is a different provision altogether and is not in any way linked to sub-sections (2) and (3).

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However, we cannot say that remaining body of section 203 is not applicable to private companies. Sub-section (2) and (3) of section 203 deals with procedure for appointment of KMPs in general. Sub-section (1) is a kind of independent section in itself.

So if a private company or a public company having less than 10 crore paid up capital appoints CFO or CEO or CS and designate them as KMP, then it is very much required to follow the procedure given in Sub-section (2) of section 203. So we have to treat Sub-section (1) and Sub-section (2) independently.

For removal of doubts:

- A. As per my opinion a private company can appoint a CFO or CEO or CS without following the procedure given in Sub-sections (2) & (3) of section 203 **provided the appointee is not assigned the status of KMP** as sub-section (1) of section 203 is not applicable to a private company.

However if such private company designate such appointee as KMP then provision given in sub-section(2), (3) and (4) shall become applicable.

- B. Similarly a private company which already have a CFO along with CS, before the implementation of the new Act, is not required to re-confirm the appointment of the CFO by the procedures mentioned in Sub-sections (2) & (3) of section 203 in new Act, if the CFO and CS were not designated as KMP at the time of their appointment.

This short note is just an opinion and open for discussion.

3. Documents required for appointment of Directors/Independent Directors

Companies Act, 2013 has prescribed following documents to be collected from proposed director for the purpose of appointment under applicable sections- 149, 150, 152 and 164:

- i. Consent in writing to act as Director in form **DIR-2** pursuant to Rule-8 of Companies (Appointment & Qualification of Directors) Rules, 2014.
- ii. Intimation in Form **DIR-8** pursuant to Rule-14 in terms of Companies (Appointment & Qualification of Directors) Rules, 2014, to the effect that he/she is not disqualified u/s 164(2) of Companies Act, 2013.

Additional Document for appointment of Independent Director

- iii. A declaration to the effect that proposed Director meets the criteria of Independence as provided u/s 149(6) of Companies Act, 2013.

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4. **Registration and Condonation of delay in case of Charge**

Registration of creation or modification of charge: As per rule 3 of Companies (Registration of Charges) Rules, 2014, for registration of charge as provided in sub-section (1) of section 77, section 78 and section 79, the particulars of the charge together with a copy of the instrument, if any, creating or modifying the charge is to be filed in Form No. **CHG-1** (for other than Debentures) or Form No. **CHG-9** (for debentures including rectification), as the case may be, duly signed by the company and the charge holder and filed with the Registrar within a period of 30 days of the date of creation or modification of charge along with the fee.

Condonation of delay by ROC: As per rule 4, now the condonation of delay beyond 30 days but upto and within 300 days of creation of charge lies with ROC and he will decide the additional fee. In case such charge is to be created within 30 days only Form **CHG.1** is needed. But the charge is beyond 30 days but within 300 days then firstly form **CHG.10** is to be filed with **declaration** from the company signed by its secretary or director that such belated filing shall not adversely affect rights of any other intervening creditors of the company and after it form **CHG.1** is to be filed.

Condonation of delay by Central Government: As per rule 12, in case:

- i. Form **CHG.1** for registration of charge is not filed within extended time of 300 days from the date of its creation or;
- ii. Form **CHG.4** towards satisfaction of charge (Rule 8) is not filed within 30 days from satisfaction.

Online application in form **CHG.8** is to be made to Central Government for seeking Condonation of delay by Central Government for extension of time for filing particular of said charges. In Companies Act, 2013, no need to file any petition of seeking Condonation of delay by Central Government.

For my other Corporate Law Articles on Companies Act, 2013, Kindly refer the links mentioned below:

1. [List of Resolutions to be filed with ROC in Form MGT.14](#)
2. [Procedure for Appointment of Additional Director in CA 2013](#)
3. [Different Monetary Limits under Companies Act 2013](#)
4. [Companies to have Uniform Financial year under CA 2013](#)

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Disclaimer:

This write up is intended to start academic discussion on few significant interpretations under Companies Act, 2013. It is not intended to be a professional advice and should not be relied upon for real time professional facts. Readers are advised to refer relevant provision of law before applying or accepting any of the point mentioned above. Author accepts no responsibility whatsoever and will not be liable for any losses, claims or damages which may arise because of the contents of this write up.

I am very hopeful that this write up would be of some help to understand the concepts in new Companies Act, 2013.

Thanks

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