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COMPANY SECRETARY

SECTION- 203 UNDER COMPANIE'S ACT- 2013

COMPANY SECRETARY UNDER COMPANIES ACT, 2013

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Series– 37

SERIES

NO - 37

Definition of Company Secretary:

COMPANY SECRETARY: As per Section 2 sub section 24 of Companies Act, 2013 Company Secretary‖ or ―secretary‖ means a company secretary as defined in clause (c) of sub-section (1) of section 2 of the Company Secretaries Act, 1980 who is appointed by a company to perform the functions of a **Company Secretary** under this Act;

As per Company Secretary Act, "Company Secretary" means a person who is a member of the Institute of Company Secretary of INDIA.

In this article I will discuss the following below mention topics:

1. Appointment of Company Secretary as Per Companies Act, 2013
2. If a company already have Company secretary then Designate him as Key Managerial Personnel (KMP).

A. **DESIGNATION OF COMPANY SECRETARY AS KMP, IF COMPANY ALREADY HAVE A COMPANY SECRETARY**:-

Private Limited Company:

Requirement to appoint Company Secretary in Private Limited Company govern by the Provision of Rule- 8A of The Companies "Appointment and Remuneration of Managerial Personnel" Chapter XIII.

Time Period: The Act doesn't provide the time period in which a Company have to designate Company Secretary as KMP. But it's advisable to appoint a Company Secretary as KMP in first board meeting conduct after applicability of such provision. In this Case Rule 8A come into force from 9th June, 2014.

Process to Designate as KMP: Below given is process:

I. Call Board Meeting: Pass a Board Resolution for designation of Company Secretary as KMP as per section 203.

II. Consent to act as KMP: Receive a consent from Company Secretary to act as KMP.

III. Filling of Form with ROC:
MGT-14: As per provision of Section 179 (3) Rule 8(2): Company require to file MGT- 14 along within 30 days of passing of Board Resolution with, [Attachment: Consent Letter and CTC of Board Resolution].

MR-1: As per Rule 3 of Chapter XIII: Company required filing MR-1 at the time of appointment of KMP within 60 days of passing of Board Resolution, with [Attachment: CTC of Board Resolution and Consent Letter)

Note:

i. As per Section 170 (2) there is needed to file form DIR-12 for any change in particular of Director or KMP. So in the above case change is designation of KMP and director. But practically it's not possible to file e-form DIR-12 for change in particular. If we will try to file same then MCA will not accept the same.
ii. Above mention resolution for designation as KMP can't pass as Resolution by Circulation. There is need to hold Board Meeting for the same.

Public Limited Company:

Requirement to appoint Company Secretary in Private Limited Company govern by the Provision of Rule- 8 of The Companies "Appointment and Remuneration of Managerial Personnel" Chapter XIII.

Time Period: The Act doesn't provide the time period in which a Company have to designate Company Secretary as KMP. But it's advisable to appoint a Company Secretary as KMP in first board meeting conduct after applicability of such provision. In this Case Rule 8 come into force from 1st April, 2014.

Process to Designate as KMP: Below given is process:

I. Call Board Meeting: Pass a Board Resolution for designation of Company Secretary as KMP as per section 203.

II. Consent to act as KMP: Receive consent from Company Secretary to act as KMP.

III. Filling of Form with ROC:

MGT-14: As per provision of Section 179 (3) Rule 8(2): Company require to file MGT- 14 along within 30 days of passing of Board Resolution with, [Attachment: Consent Letter and CTC of Board Resolution].

MR-1: As per Rule 3 of Chapter XIII: Company required filing MR-1 at the time of appointment of KMP within 60 days of passing of Board Resolution, with [Attachment: CTC of Board Resolution and Consent Letter)

Note:

i. As per Section 170 (2) there is needed to file form DIR-12 for any change in particular of Director or KMP. So in the above case change is designation of KMP and director. But practically it's not possible to file e-form DIR-12 for change in particular. If we will try to file same then MCA will not accept the same.

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ii. Above mention resolution for designation as KMP can't pass as Resolution by Circulation. There is need to hold Board Meeting for the same.

B. **APPOINTMENT OF COMPANY SECRETARY AS PER COMPANIES ACT, 2013:**

Requirement to appoint Company Secretary in Private Limited Company govern by the Provision of Rule- 8A and in Public / Listed Company by the provisions of Rule-8 of The Companies "Appointment and Remuneration of Managerial Personnel" Chapter XIII under Section-203 of Companies Act, 2013.

Time Period: As per Section 203(4), if Company doesn't not have Company secretary before 01st April, 2014 and provision of Section 203 applicable on such company then such company has to appoint Company Secretary with in 6 (Six) month till 30th September, 2014 (from 1st April, 2014).

Process to Appoint as Company Secretary:

I. Call Board Meeting: As per Section- 203(2) Pass a Board Resolution for Appointment of Company Secretary. Board Resolution should contain the following
   - Terms and Condition of Appointment.
   - Remuneration
   - Membership No.

II. Consent to act as Company Secretary: Receive consent from Company Secretary to act as Company Secretary.

III. Consent to act As Company KMP: Receive consent from Company Secretary to act as Company Secretary.

IV. **Process for appointment of Company Secretary**: Below given is process:

MGT-14: As per provision of Section 179 (3) Rule 8(2): Company require to file MGT- 14 along within 30 days of passing of Board Resolution with, [Attachment: Consent Letter and CTC of Board Resolution].

MR-1: As per Rule 3 of Chapter XIII: Company required filing MR-1 at the time of appointment of KMP within 60 days of passing of Board Resolution, with [Attachment: CTC of Board Resolution and Consent Letter)

DIR- 12: As per Section 170 (2) there is needed to file form DIR-12 for appointment of Director or KMP within 30 days of passing of Board resolution with (Attachment: Consent Letter, Appointment Letter, Self attested Copy of PAN card and CTC of Board Resolution).

Note:

A. **Circular Resolution**: Resolution for appointment of CS is given in Section 179(3) Read with rule 8(2). Every Resolution mention in 179(3) required to be passed by Meeting of Board of Director (Including Video Conferencing). So Appointment of Removal of Board of Director can't done by Circular Resolution.

B. **Filling of Vacancy of Company Secretary:** As per Section 203 In case of Vacancy at place of Company Secretary. Company will appoint another Company Secretary within 6 month from the date of resignation of Company Secretary.

C. **Register Of Key Managerial Personnel**: Section- 170(*1*) Every company shall keep at its registered office a register containing such particulars of its directors and key managerial personnel as may be prescribed in Rule 17 of the Companies (Appointment and Qualification of Directors) Rules 2014, which shall include the details of securities held by each of them in the company or its holding, subsidiary, subsidiary of company's holding company or associate companies.

Rule 17 of the Companies (Appointment and Qualification of Directors) Rules 2014: prescribed every company shall keep at its registered office a register of its directors and key managerial personnel containing the following particulars, namely:-

i. Director Identification Number (optional for key managerial personnel);

ii. present name and surname in full;
iii. any former name or surname in full;
iv. father's name, mother's name and spouse's name(if married) and surnames in full;
v. date of birth;
vi. residential address (present as well as permanent);
vii. nationality (including the nationality of origin, if different);
viii. occupation;
ix. date of appointment and reappointment in the company;
x. date of cessation of office and reasons therefor;
xi. office of director or key managerial personnel held or relinquished in any other body corporate;
xii. membership number of the Institute of Company Secretaries of India in case of Company Secretary, if applicable; and
xiii. Permanent Account Number (mandatory for key managerial personnel if not having DIN);

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

xiv. he number, description and nominal value of securities;
xv. the date of acquisition and the price or other consideration paid;
xvi. date of disposal and price and other consideration received;
xvii. cumulative balance and number of securities held after each transaction;
xviii. mode of acquisition of securities ;
xix. mode of holding – physical or in dematerialized form; and
xx. whether securities have been pledged or any encumbrance has been created on the securities.
xxi. date of the board resolution in which the appointment was made;

Note: There is no other prescribed format for the Register. Any format satisfying conditions of this Rules and containing all these information may be adopted by a company.

(Author – CS Divesh Goyal, GOYAL DIVESH & ASSOCIATES Company Secretary in Practice from Delhi and can be contacted at csdiveshgoyal@gmail.com) Disclaimer: The entire contents of this document have been prepared on the basis of relevant provisions and as per the information existing at the time of the preparation. Though utmost efforts has made to provide authentic information, it is suggested that to have better understanding kindly cross-check the relevant sections, rules under the Companies Act, 2013. The observations of the author are personal view and the authors do not take responsibility of the same and this cannot be quoted before any authority without the

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