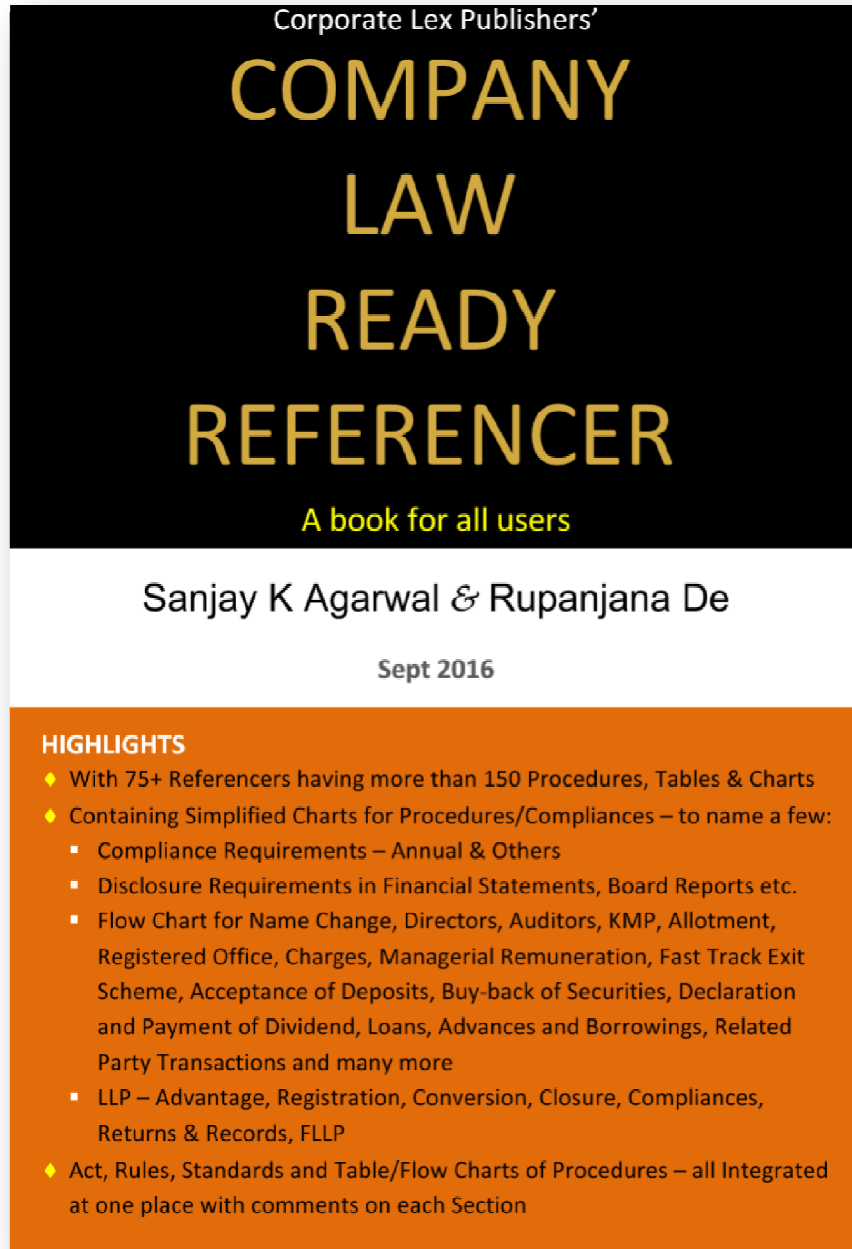


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BEGINNING OF BOOK (A WHOLE NEW APPROACH)

HOW TO USE THIS BOOK	
- There are three Sections of this book (i) Part A contains useful references and tables; (page A-1 to A-88) (ii) Part B contains text of Act, Rules, Secretarial Standards and Flow Charts of important compliance procedures; (page B-1 to B-613) (iii) Part C contains Schedules and useful related legislation and tables. (page C-1 to C-9)	
- Index of flow charts / tables are placed at the beginning of contents page. - Index of Rules & Secretarial Standards is mentioned at the beginning of each chapter. - You can search required chart / table through 'Keyword Search Page' also. - Date of enforcement is mentioned in the 'Index of Sections' (page 1) and also on the h section in Part B. - Relevant rule applicable to a section is mentioned in the 'Index of Sections'. (page 1) - Corresponding Section of Companies Act, 1956 relevant to a Section is mentioned just of each Section. - All relevant Tables / Charts are placed at the beginning of each Chapter. - All relevant Rules and Secretarial Standards are placed just below the text of the Secti relates. In this manner you can find Tables / Charts, Section, Rules and Secretarial Stan at same place with comments for each section.	
Reference to Rules / Standards, if any, in respect of a section is appearing in the body of text inside <i>italicized</i> brackets [see Rule/Standard...].	d
All references to amendments, circulars, notifications etc. are appearing in the body of Act / Rules and are inside superscripted <i>italicized</i> brackets [1].	tion, [1999] y to the exten months,]
Amendments are written in the following style:	
Omissions are written inside <i>italicized</i> brackets [...].	in India,]
Substitutions are highlighted in bold with the old text being written inside superscripted <i>italicized</i> brackets [1].	and [Sub
Insertions are highlighted in bold.	rescrib
References to other legislation, references, forms applicability, comments etc. are presented in bold keywords under Remarks column on the right hand side.	
References to Forms, wherever it appear in the text of legislation are highlighted in bold.	RTI ar
Requirement of resolutions, wherever it appear in the text of legislation are highlighted in bold.	spe
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[illegible]

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PRESENTATION STYLE

fine which shall not be less than one lakh rupees but which may extend to five lakh rupees, or with both.

(3) Where all the directors of a company vacate their offices under any disqualifications specified in sub-section (1) the promoter or in his absence the Central Government shall appoint the required number of directors who shall hold the office till the directors are appointed by the company in the general meeting.

(4) A private company may by its articles provide any other ground for the vacation of the office of a director in addition to those specified in sub-section (1).

Comments: This section provides the grounds and circumstances under which the office of a director shall become vacant. Where a person acts as a director after becoming aware that the office of director held by him has become vacant on account of any disqualification, he shall be punishable with imprisonment or with fine. If all the directors vacate their offices under any of the disqualifications, the promoter or in his absence, the central government, shall appoint the required number of directors who shall hold office till the directors are appointed in the general meeting. A private company may provide additional ground for vacation of office of a director. A director shall be liable for offences that occurred during his tenure.

Section 168: Resignation of director.

[Enforced with effect from 01-04-2014]

(1) A director may resign from his office by giving a notice in writing to the company and the board shall on receipt of such notice take note of the same and the company shall intimate the Registrar in such manner, within such time and in such form as may be prescribed [see Rule 15] [Circular No. 3/2015, dated 3-3-2015 - Clarification relating to Form of e-form DIR-11 and DIR-12] and shall also place the fact of such resignation in the report of directors laid in the immediately following general meeting by the company.

Provided that a director shall also forward a copy of his resignation along with detailed reasons for resignation to the Registrar within thirty days of resignation in such manner as may be prescribed. [see Rule 16]

(2) The resignation of a director shall take effect from the date on which the notice is received by the company or the date, if any, specified by the director in the notice whichever is later.

Provided that the director who has resigned shall be liable even after his resignation for the offences which occurred during his tenure.

(3) Where all the directors of a company resign from their offices, or vacate their offices under section 167, the promoter or, in his absence the Central Government shall appoint the required number of directors who shall hold the office till the directors are appointed by the company in general meeting.

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Chapter-XI Appointment and Qualification of Directors

S.169

Comments: This new section provides that a director may resign from his office by giving a notice in writing and the board shall, on receipt of such notice, take note of the same and the company shall intimate the registrar and place such resignation in the subsequent general meeting of the company. The director shall also forward a copy of his resignation with reasons to Registrar within 30 days of his resignation in such manner as may be prescribed.

Notice of resignation of director

The company shall within thirty days from the date of receipt of notice of resignation from a director, intimate the Registrar in Form DIR 12 and post the information on its website, if any.

Copy of resignation of director to be forwarded by him

Where a director resigns from his office, he shall within a period of thirty days from the date of resignation, forward to the Registrar a copy of his resignation along with reasons for the resignation in Form DIR 11 along with the fee as provided in the Companies (Registration Offices and Fees) Rules, 2014.

Provided that in case a company has already filed Form DIR 12 with the Registrar under rule 15, a foreign director of such company resigning from his office may authorize in writing a practicing chartered accountant, or cost accountant in practice or company secretary in practice or any other resident director of the company to sign Form DIR 11 and file the same on his behalf intimating the reasons for the resignation. [Inserted by the Companies (Appointments and Qualification of Directors) Amendment Rules, 2015 w.e.f. 15-01-2015]

Section 169: Removal of directors.

[Corresponding to section 244 the Companies Act, 1956]

[Enforced w.e.f. 01-04-2014 (except sub-section (4), which was enforced w.e.f. 01-04-2016)]

(1) A company may, by **ordinary resolution**, remove a director, not being a director appointed by the Tribunal under section 242, before the expiry of the period of his office after giving a reasonable opportunity of being heard.

Provided that nothing contained in this sub-section shall apply where the company has availed itself of the option given to it under section 163 to appoint not less than two-thirds of the total number of directors according to the principle of proportional representation.

(2) A special notice shall be required of any resolution, to remove a director under this section, or to appoint somebody in place of a director so removed, at the meeting at which he is removed.

(3) On receipt of notice of a resolution to remove a director under this section, the company

Comments

Remarks

Applicable Forms:
Form DIR-11,
Form DIR-12

See also our reference:

Flow Chart for Resignation of Director (page 8-312)

Comments

Rule 15 of the Companies (Appointment & Qualification of Directors) Rules, 2014

Rule 16 of the Companies (Appointment & Qualification of Directors) Rules, 2014

Remarks

Applicable Forms:
Form DIR-12

See also our reference:

Flow Chart for removal of Director (page 8-312)

approval shall be presumed.

(c) After completion of the meeting, the minutes shall be entered in the minute book as specified under section 118 of the Act and signed by the Chairperson.

Explanation - For the purposes of this rule, "video conferencing or other audio visual means" means audio visual electronic communication facility employed which enables all the persons participating in a meeting to communicate concurrently with each other without an intermediary and to participate effectively in the meeting.

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

[17] (Deleted by the Companies (Meetings of Board and its Powers) Second Amendment Rules, 2014 w.e.f. 14-04-2014) The following matters shall not be dealt with in any meeting held through video conferencing or other audio visual means -

- the approval of the annual financial statements;
- the approval of the Board's report;
- the approval of the prospectus;
- the Audit Committee Meetings for consideration of financial statement including consolidated financial statement, if any, to be approved by the Board, under sub-section (1) of section 134 of the Act (Substituted for the words "consideration of accounts" by the Companies (Meetings of Board and its Powers) Second Amendment Rules, 2014 w.e.f. 14-04-2014); and
- the approval of the matter relating to amalgamation, merger, demerger, acquisition and takeover.

Section 174: Quorum for meetings of Board.

[Corresponding to sections 287, 288 of the Companies Act, 1956]

[Enforced with effect from 01-04-2014]

(1) The quorum for a meeting of the Board of Directors of a company shall be one third of its total strength or two directors, whichever is higher, and the participation of the directors by video conferencing or by other audio visual means shall also be counted for the purposes of quorum under this sub-section.

[In case of SECTION 8 COMPANIES: a] The words "one-third of its total strength or two directors, whichever is higher" shall be substituted with the words, "either eight members or twenty five per cent of its total strength whichever is less". b] The following proviso shall be inserted, namely: "Provided that the quorum shall not be less than two members" - Notification No. CSR 46(1), dated 5-4-2015]

(2) The continuing directors may act notwithstanding any vacancy in the Board; but if and so

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Chapter-XII Meetings of Board and its Powers

S.174

long as their number is reduced below the quorum fixed by the Act for a meeting of the Board, the continuing directors or director may act for the purpose of increasing the number of directors to that fixed for the quorum, or of summoning a general meeting of the company and for no other purpose.

(3) Where at any time the number of interested directors exceeds or is equal to two thirds of the total strength of the Board of Directors, the number of directors who are not interested directors and present at the meeting, being not less than two, shall be the quorum during such time.

Explanation.— For the purposes of this sub-section, "interested director" means a director within the meaning of sub-section (2) of section 184.

(4) Where a meeting of the Board could not be held for want of quorum, then, unless the articles of the company otherwise provide, the meeting shall automatically stand adjourned to the same day at the same time and place in the next week or if that day is a national holiday, till the next succeeding day, which is not a national holiday, at the same time and place.

Explanation.— For the purposes of this section,—

- any fraction of a number shall be rounded off as one;
- "total strength" shall not include directors whose places are vacant.

[For this section also see Standard 3 of SS-1].

Comments: This section provides that the quorum for a meeting of the Board of directors shall be 1/3rd of its total strength or two directors whichever is higher. For arriving at the quorum the director participating through video conferencing or other audio-visual means shall be counted. Where the number of interested directors is more than or equal to 2/3rd of the total strength of the Board, remaining directors present at the meeting being not less than two shall be the quorum. A meeting which cannot be held for the want of quorum, shall stand adjourned.

Rule 4 of the Companies (Meetings of Board and its Powers) Rules, 2014

Refer also: SS-1 (Living Obligations and Disclosure Requirements) Regulations, 2015

See also our reference:

Table on Meeting of Board (8-342)

Comments

Standard 3 of SS-1 - Secretarial Standard on Meetings of Board of Directors

3. Quorum

3.1 Quorum shall be present throughout the Meeting.

Quorum shall be present not only at the time of commencement of the Meeting but also while transacting business.

3.2 A Director shall not be reckoned for Quorum in respect of an item in which he is interested and he shall not be present, whether physically or through Electronic Mode, during discussions and voting on such item.

For this purpose, a Director shall be treated as interested in a contract or arrangement entered into or proposed to be entered into by the company:

- with the Director himself or his relative; or
- with any body corporate, if such Director, along with other Directors holds more than two percent of the paid-up share capital of that body corporate, or he is a promoter, or manager or chief executive officer of that body corporate;
- with a firm or other entity, if such Director or his relative is a partner, owner or Member, as the case may be, of that firm or other entity.

Relevant Rule is written just below the text of Section.

Referencer (Flow Chart / Chart / Table)

applicable to Section is also mentioned on the right hand side under the 'remark' column for easy track.

Relevant Secretarial Standard is written just below the text of Section.

Reference to any other legislation required for a Section is also mentioned on the right hand side under the 'remark' column.

Others:

- Corresponding section of the Companies Act, 1956 is given on heading of section itself
- Date of enforcement of each section is also given on heading itself

All amendments are also inserted in the body of legislation without use of footer (insertions are in bold, deletions are in italic brackets and substitutions are in bold with old text written in

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