Private Circulation

HAND BOOK ON

BOARD OF DIRECTORS AND THEIR RESPONSIBILITIES

CS.P.Eswaramoorthy, B.Sc., LLB., FCS.,IP,
Insolvency Professional
P Eswaramoorthy and Company , Company Secretaries & Registered Trade Mark Attorney

HAND BOOK ON

BOARD OF DIRECTORS AND THEIR RESPONSIBILITIES

ASVIKA
CORPORATE CONSULTANCY SERVICES (P) LTD
Transforming Corporates to the best of Governance

CS.P.Eswaramoorthy, B.Sc., LLB., FCS.,IP,
Insolvency Professional
P Eswaramoorthy and Company ,
Company Secretaries &
Registered Trade Mark Attorney

INDEX

BOARD OF DIRECTORS AND THEIR RESPONSIBILITIES

Purpose of this book is to highlight general duties of Board of Directors in a Company.

Directors might have noticed about the recent initiatives and actions of Ministry of Corporate Affairs (MCA), few of which are DIN deactivation, Strike off the Companies, KYC, Show Cause Notices, etc. As the present business in India moves towards aligning its affairs with global standards, it is time, for Indian corporate, particularly, companies which are closely held by the family members, be it Private or Public, to change their mind-set towards compliance regime. As per Companies Act, 2013, including the rules and regulations made thereunder, there are numerous provisions which shall be complied with and the prime responsibility of compliance lies with Board.

Companies which have transparency in its business and timely compliance track-record, are always having edge in the business environment. One of the best available tools to achieve "transparency and compliance" is to adhere to the provisions of law and to listen to the independent professionals like Auditors and Company Secretaries on Compliance.

Though the Author has noticed that many of the Directors are true to the business and having great ethics and moral, in general the Directors are either unware or with half-way information on their responsibilities. The Directors are bridge between the Company and Stakeholders and they occupancy fiduciary duties. Any failure / delay / default in discharging the duties by a Director would lead not only penalty and punishment, but some occasions it touches the reputation.

With the above background, this hand book is prepared to create the awareness of the duties and responsibilities of the Directors in the Company.

Company & its evolving:

The concept of 'Company' in business is not new and it was dealt with, in 4th century BC itself during 'Arthashastra' days. Its' shape got revamped over a period of time according to the needs of business growth. The history of Indian Company law began with Join Stock Companies Act,1850, which is basically an English Company Law and got introduced during the time of East India companies.

How Company different from Proprietorship / Partnership Firm

1. Company as an artificial person
2. Separate Legal Entity
3. Perpetual Succession (It never dies, unless it is wound-up)
4. Limited liability
5. Free and Easy Transferability of Shares
6. Owning Properties (no member or shareholder or Director can claim himself to be the owner of the company's property)
7. Can sue and can be sued
8. Dual Relationship
9. Company is not a citizen, but it has Nationality and Residence

Board of Directors

As company is an artificial person is managed by human beings. A company acts through its shareholders and Board of Directors. The boards of directors are in-charge of the management of the company's business; they make the strategic and operational decisions of the company and are responsible for ensuring that the company meets its statutory obligations. Boards of Directors are elected representative of the shareholders. The directors play important role in the day to day functioning of the company. It is the board, which is responsible for company's overall performance. To attain the objectives prescribed in Memorandum of Association of the company, company depends on Board (collectively) and directors (individually). Directors of a Company are its eyes, ears, brain, hands and other essential limbs.

Directors

Section 2(34) of the Act prescribed that “director” means a director appointed to the Board of a company. Section 2(10) of the Companies Act, 2013 defined that “Board of Directors” or “Board”, in relation to a company, means the collective body of the directors of the company. The term 'Board of Directors' means a body duly constituted to direct, control and supervise the affairs of a company. As per Section 149 of the Companies Act, 2013, the Board of Directors of every company shall consist of individual only. Thus, no body corporate, association or firm shall be appointed as director. Again Section 166 of Companies Act, 2013, prohibits assignment of office of director to any other person. Any assignment of office made by a director shall be void. In nutshell, only Individuals can be Director and such appointed individual can't assign his office.

Importance of Directors

Directors are the face of the Company. The image and integrity of the company depends on the image of and integrity of the Directors. Even though, the shareholders are having ultimate authority to decide on the appointment and removal of Directors, running and managing day to day affairs of the company are in the hands of Board.

If a company commits a default or non compliances of any provisions of the Companies Act, 2013 , Company is liable for fine. As company, being an artificial person, cannot be sent to prisons in case of serious violations, which involve imprisonment. Who can be sent? Only the Board of Directors who are managing the affairs of the Company. Board of Directors are authorized to do what the company is authorized to do unless barred by restrictions on their powers by the provisions of the Companies Act, 2013, the Memorandum or Articles of the company. Except where express provisions are made that the powers of a company in respect of any matter are to be exercised by the company in general meeting, in all other cases the Board is entitled to exercise all its powers. The role and responsibility of a Director in a company is multifaceted.

Duties and Responsibilities of Directors

The directors are under an obligation to ensure that the company's affairs are managed in a most effective manner. It is not necessary that all the task to be completed by themselves. They can delegate certain responsibilities to the MD, CEO, CS, CFO etc. However, the ultimate responsibility always lies on the Directors.

DUTIES OF DIRECTORS

1. Director to act in accordance with AOA.
2. A director of a company shall act in good faith in order to promote the objects of the company for the benefit of its members as a whole, and in the best interests of the company, its employees, the shareholders, the community and for the protection of environment.
3. A director of a company shall exercise his duties with due and reasonable care, skill and diligence and shall exercise independent judgment.
4. A director of a company shall not involve in a situation in which he may have a direct or indirect interest that conflicts, or possibly may conflict, with the interest of the company.
5. A director of a company shall not achieve or attempt to achieve any undue gain or advantage either to himself or to his relatives, partners, or associates
6. A director of a company shall not assign his office and any assignment so made shall be void.

Role of individual Directors

1. Disclose their interest in a contract or arrangement with the company
2. Ensure that they remain qualified to act as Director
3. Not act as Director if they automatically vacate office as director under section 167 of the act
4. Inform the company about related parties
5. Not make undue gain or advantage from the company
6. Not assign their office of a director to anyone
7. Attend Board meeting regularly
8. Participate in the Board discussion effectively and before the meeting have the detailed agenda for the meeting
9. If they have any different opinion on any particular resolution or subject, make sure that their dissent are recorded in the minutes
10 Refrain from participating in board meeting if they are interested
11. Ensure that Balance Sheet and Annual returns are filed in time with MCA
12. Ensure that Board Meetings and General Meetings are conducted in time
13. Have a report or certificate from CS, CA, CFO, CEO COO etc ensuring the statutory compliances under various enactments.
14. Ensure all statutory registers are maintained and updated properly i.e Register of Members, Register of Directors, Register of Directors shareholdings, Register of Charges, Register of Share Transfer, Register of investment, Register of loan, investment, guarantee and securities provided, Register of contract in which directors are interested etc

To ensure certain important compliances under the Companies Act,2013.

1. To maintain and preserve Certificate of Incorporation, Statutory Registers, Board and General Meeting minutes
2. To affix the name and address of the Registered Office of the company outside every office of the company.
3. To mention name, address, CIN, telephone no, email, website, if any on all letterhead, bills, invoice, purchase order etc
4. Do n ot issue shares at discount
5. Do not accept deposit from Public, if the company is a private limited company
6. To file Balance Sheet and Annual return with the Registrar of Companies in time
7. To hold Board meeting and general meeting in time
8. Issue notice for general meeting as per the AOA and Companies Act
9. Ensure necessary quorum present in Board and General Meetings
10. To maintain proper books of accounts
11. Pay dividend in time, if declared
12. Ensure Transfer, transmissions are completed in time and certificate are issued in time
13. To check the Board report covers all the conditions specified under section 134 and other provisions
14. To check and ensure CSR provisions are complied, if applicable
15. To ensure Annual report are sent to shareholders well in advance
16. To appoint internal auditor, if applicable
17. To Appoint Cost Auditor, if applicable
18. To Appoint Company Secretary, if applicable
19. To appoint KMP, if applicable
20. To Appoint Auditor
21. To ensure that all the Directors are disclosed their interest to the Board of Directors
22. To intimate appointment and resignation of Directors to MCA
23. To Allow inspection of Register of Members
24. To check the borrowing powers and limits of borrowings , if the company is public ltd company
25. Ensure that shares are demated, if the company is public limited company
26. Not to give any loan or advances to Directors are their relatives whether directly or indirectly
27. Not to enter related party transactions unless transactions are under arms length and in the ordinary course of business

28. To ensure that investments, loans, corporate guarantee, Donations are within the limits
29. To ensure remuneration to the Directors are within the limits, if the company is limited company
30. Ensure that all the special resolution, certain ordinary and board resolutions are filed with Registrar of Companies
31. To assist and cooperate in inspection by the Registrar of Companies.

Position of Directors

Legal position of a Director

1. As an Agent of the Company (Principal is Company and Agent is Director)
2. As a Trustee of the Company. (Directors are the custodians of company's properties)
3. As an Executive of the Company (Managing day to day affairs of the company)

   In the interest, we would to highlight certain important provisions of the companies act relating to Board of Directors, duties, responsibilities and liabilities.

Classes of Directors

1. First Directors

First Directors are named in the Articles of Association at the time of Incorporation of a Company. Where no such provision is made in the articles of a company for the appointment of the first director, the subscribers to the memorandum who are individuals shall be deemed to be the first directors of the company subject to filing form DIR12 until the directors are duly appointed in the General Meeting. The First Directors of the private limited company, unless articles provides otherwise can continue as directors of the company till they decides to resign or death or removal etc.

2. Additional Director

The board of directors can appoint additional directors, if such power is conferred on them by the articles of association. Regulation 66 of Table F authorizes the Board to appoint the additional directors. The number of directors and additional directors together shall not at any time exceed maximum strength fixed for the Board by the articles. Such additional directors hold office only up to- (a) the date of next annual general meeting; or (b) the last date on which the annual general meeting should have been held, whichever is earlier.

If default is made in holding annual general meeting, the additional director shall vacate his office on the last day on which the annual general meeting ought to held. A person who fails to get appointed as a director in a general meeting cannot be appointed as Additional Director. Section 161(1) of the Act applies to all companies, whether public or private.

3. Alternate Director

The Board of Directors of a company can appoint an Alternate Director in the absence of a original director during his absence for a period of not less than three months from India. Provision should be there in the articles or by a resolution passed by the company in general meeting for appointment of the alternate director. The person in whose place the Alternate Director is being appointed should be absent for a period of not less than 3 months from India. The person to be appointed as the Alternate Director shall be the person other than the person holding any alternate directorship for any other Director in the company. Term of Alternate Director is until the term of Original Director and Alternate Director automatically vacates the office as a Director as Once the Original Director returns to India.

4. Managing Director

A Managing Director is the one who is responsible for overall management and operations of the company. A Company can have more than one Managing Director. However, there are restrictions on acting as a Managing Director for more than one public company. Section 2(54) of the Companies Act, 2013, defines 'managing director'. It stipulates that a “managing director” means a director who, by virtue of the articles of a company or an agreement with the company or a resolution passed in its general meeting, or by its Board of Directors, is entrusted with substantial powers of management of the affairs of the company and includes a director occupying the position of managing director, by whatever name called.

Public companies are having certain restrictions on Appointment and Remuneration payable to the Managing Directors. However, Private Limited companies are not having any such restriction.

Key Managerial Personnel The Companies Act, 2013 has for the first time recognized the concept of Key Managerial Personnel. As per section 2(51) “key managerial personnel”, in relation to a company, means— (i) the Chief Executive Officer or the managing director or the manager; (ii) the company secretary; (iii) the whole-time director; (iv) the Chief Financial Officer; and (v) such other officer as may be prescribed.

As per Section 203 of the Companies Act, 2013 read with the Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014, the following class of Companies, namely Every listed company, and Every other public company having paidup share capital of Rs. 10 Crores or more shall have the whole- key managerial personnel.

5. Executive Director or Whole Time Director

Section 2(94) of the Companies Act, 2013 defines “whole-time director” as a director in the whole-time employment of the company. A Whole time Director is also an Executive Director.

6. Independent Director

Certain companies are mandated to have Independent Directors. The Following Companies are required to have an Independent Directors Every listed public company shall have at least one-third of the total number of directors as independent directors. According to Rule 4 of Companies (Appointment and Qualification of Directors) Rules, 2014 the following class or classes of companies are required to have at least two directors as independent directors -

(I) the Public Companies having paid up share capital of ten crore rupees or more; or
(ii) the Public Companies having turnover of one hundred crore rupees or more; or
(iii) the Public Companies which have, in aggregate, outstanding loans, debentures and deposits, exceeding fifty crore rupees.

Who is an Independent Director?

Section 149(6) of the Companies Act, 2013, provides that: Independent Director, in relation to a company, means a director other than a managing director or a whole time director or a nominee director -

(a) who, in the opinion of the Board, is a person of integrity and possesses relevant expertise and experience;

(b) (i) who is or was not a promoter of the company or its holding, subsidiary or associate company;

(ii) who is not related to promoters or directors in the company, its holding, subsidiary or associate company;

(iii) who has or had no pecuniary relationship with the company, its holding, subsidiary or associate company, or their promoters, or directors, during the two immediately preceding financial years or during the current financial year. In Government companies, the criteria is not required to be followed.

(d) none of whose relatives has or had pecuniary relationship or transaction with the company, its holding, subsidiary or associate company, or their promoters, or directors, amounting to two per cent. or more of its gross turnover or total income or fifty lakh rupees or such higher amount as may be prescribed, whichever is lower, during the two immediately preceding financial years or during the current financial year;

(e) who, neither himself nor any of his relatives—

(I) holds or has held the position of a key managerial personnel or is or has been employee of the company or its holding, subsidiary or associate company in any of the three financial years immediately preceding the financial year in which he is proposed to be appointed;

(ii) is or has been an employee or proprietor or a partner, in any of the three financial years immediately preceding the financial year in which he is proposed to be appointed, of—

(A) a firm of auditors or company secretaries in practice or cost auditors of the company or its holding, subsidiary or associate company; or

(B) any legal or a consulting firm that has or had any transaction with the company, its holding, subsidiary or associate company amounting to ten per cent. or more of the gross turnover of such firm;

(iii) holds together with his relatives two per cent. or more of the total voting power of the company; or

(iv) is a Chief Executive or director, by whatever name called, of any non profit organization that receives twenty-five per cent. or more of its receipts from the company, any of its promoters, directors or its holding, subsidiary or associate company or that holds two per cent. or more of the total voting power of the company; or

(f) who possesses such other qualifications as may be prescribed.

7. Women Director

To encourage women to become part of policy making decision in the companies, Companies Act,2013 provides mandatory appointment of women directors on the Board for certain companies. Rule 3 of Companies (Appointment and Qualification of Directors) Rules, 2014, prescribes the following class of companies shall appoint at least one woman director-

(i) every listed company;

(ii) every other public company having :- (a) paid–up share capital of one hundred crore rupees or more; or (b) turnover of three hundred crore rupees or more .

Private Limited companies are not mandatorily required to have a women director in the Board.

8. Nominee Director

Nominee Director means Director nominated by any institution in pursuance of the provisions of any law for the time being in force or of any agreement or by the Central Government or the State Government by virtue of its shareholding in a Government Company. In other words, nominee directors are watchdogs of the financial institutions to safeguard their investments.

Appointment of Directors

General provisions relating to appointment of directors Director Identification Number (DIN) is compulsory for appointment of director of a company. Every person proposed to be appointed as a director shall furnish his Director Identification Number and a declaration that he is not disqualified to become a director under the Act. A person appointed as a director shall on or before the appointment give his consent to hold the office of director in physical form DIR-2 i.e. Consent to act as a director of a company. Company shall file Form DIR-12 (particulars of appointment of directors and KMP along with the form DIR-2 as an attachment within 30 days of the appointment of a director and necessary fee.

No of Directorship

No person is allowed to hold office as a Director in more than 20 Companies at the same time. Out of these 20 companies, the person can be appointed as a director in maximum of10 Public companies. A person can be a director in 20 private companies but cannot become a director in more than 10 public companies.The Company can have maximum 15 Directors. If the company wants to have more than 15, subject to passing Special Resolution in the General meeting, Limits may be increased. Minimum Directors for Private limited company is 2 and for Public Company are

Qualification of Director

There no academic qualification for a Director. No person can be appointed as Director without having valid DIN(Director identification Number) Minor cannot be appointed as Director. To become a Director, he should be a Major. A person shall not be eligible for appointment as a director of a company, if

Disqualification of Director

A person shall not be eligible for appointment as a director of a company, if —

(a) he is of unsound mind and stands so declared by a competent court;

(b) he is an undischarged insolvent;

(c) he has applied to be adjudicated as an insolvent and his application is pending;

(d) he has been convicted by a court of any offence, whether involving moral turpitude or otherwise, and sentenced in respect thereof to imprisonment for not less than six months and a period of five years has not elapsed from the date of expiry of the sentence. If a person has been convicted of any offence and sentenced in respect there of to imprisonment for a period of seven years or more, he shall not be eligible to be appointed as a director in any company;

(e) an order disqualifying him for appointment as a director has been passed by a court or Tribunal and the order is in force;

(f) he has not paid any calls in respect of any shares of the company held by him, whether alone or jointly with others, and six months have elapsed from the last day fixed for the payment of the call;

(g) he has been convicted of the offence dealing with related party transactions under section 188 at any time during the last preceding five years; or

(h) he has not been allotted DIN.

(2) Disqualification by reason of default made by a company:
No person who is or has been a director of a company which—

(a) has not filed financial statements or annual returns for any continuous period of three financial years; or

(b) has failed to - repay the deposits accepted by it or pay interest thereon; or - redeem any debentures on the due date or pay interest due thereon; or - pay any dividend declared and such failure to pay or redeem continues for one year or more,shall be eligible to be re-appointed as a director of that company or appointed in other company for a period of five years from the date on which the said company fails to do so

Resignation of Director

A director may resign from his office by giving notice in writing. The Board shall, on receipt of such notice within 30 days intimate the Registrar in Form DIR-12 and also place the fact ofsuch resignation in the Directors' Report of subsequent general meeting of the company and post the information on its website. The director may also forward a copy of resignation alongwith detailed reasons for the resignation to the Registrar in Form DIR-11 within 30 days from the date of resignation.

Automatic Vacation of Office of a Director

Certain circumstances office of the Director will automatically become vacant under section. 167. One important condition is that he has to attend at least one meeting in a period of 12 months time.

The office of a director shall become vacant in case—

(a) He incurs any of the disqualifications specified in section 164;

(b) He absents himself from all the meetings of the Board of Directors held during a period of twelve months with or without seeking leave of absence of the Board;

(c) He acts in contravention of the provisions of section 184 relating to entering into contracts or arrangements in which he is directly or indirectly interested;

(d) He fails to disclose his interest in any contract or arrangement in which he is directly or indirectly interested

(e) He becomes disqualified by an order of a court or the Tribunal;

(f) He is convicted by a court of any offence, whether involving moral turpitude or otherwise and sentenced in respect thereof to imprisonment for not less than 6 months;

Provided that the office shall be vacated by the director even if he has filed an appeal against the order of such court;

(g) He is removed in pursuance of the provisions of this Act;

(h) He, having been appointed a director by virtue of his holding any office or other employment in the holding, subsidiary or associate company, ceases to hold such office or other employment in that company.

If a person, functions as a director even when he knows that the office of director held by him has become vacant on account of any of the disqualifications specified above, he shall be punishable with imprisonment for a term which may extend to 1 year or with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees or with both.

Board Meetings

The board meetings are held periodically to decide policy matters, review and asses the functioning of the company. These meetings can be convened at any place and any time. Every company is required to hold 4 Board meetings in a year and time cap between two board meetings shall not be exceed 120 days. The decision taken at the board meetings are done by majority. Quorum for the board meetings are 1/3rd of the total strength or two director whichever is higher.

General Meetings

Every company shall hold an annual general meeting each year in addition to any other meetings. First annual general meeting shall be held with in 9 months from the closure of financial year and subsequent annual general meeting shall be held with in 6 months from the close of financial year. Time cap between two AGM shall not exceed 15 months. The purpose of Annual General Meeting is to Approve Balance sheet including P & L, Cash flow statement, schedule and notes thereof,

Powers of Board of Directors

Following powers to be exercised only at the meeting. i.e not by circulation or otherwise

1. To allot shares
2. To borrow money
3. To buyback of shares
4. To invest companies funds
5. To grant loans, provide corporate guarantee or security
6. To approve financial statement and directors report
7. To diversify the business
8. To Approve amalgamation, merger, demerger etc
9. To make donations
10. To Appoint Key Managerial Persons
11. To Appoint secretarial and internal auditors

Rights of Individual Directors

1. To received Notice of Board and General Meetings
2. To Attend Board and General Meetings
3. To summon a board meeting
4. To receive Agenda and notes on Agenda for the meeting
5. To Inspect the attendance register of the Board meetings
6. To received circular resolutions
7. To have the dissent recorded in the minutes
8. To vote or abstain from the meeting
9. To tender resignation
10. To inspect the Board meeting minutes
11. To receive copy of minute book
12. To inspect the books of account and other books and papers
13. To receive sitting fees

Corporate Social Responsibility CSR)

Following companies are required to spent at least 2% of their average net profit during three immediate preceding financial years towards social and economic activities The Section applies to the following classes of companies during immediate preceding financial year:

(I) Companies having Net Worth of rupees five hundred crore or more;
(ii) Companies having turnover of rupees one thousand crore or more;
(iii) Companies having Net Profit of rupees five crore or more

Board of Directors report shall have disclosure about CSR Policy, amount spent, amount unspent, area where amount spent, whether direct or indirect spent etc. disclosure is very important. If the company fails to spend such amount, the Board shall, in its report specify the reasons for not spending the amount. If the Board fails to comply the provision with respect to disclosures, the company shall be punishable with fine which shall not be less than fifty thousand rupees but which may extend to twenty-five lakh rupees and every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to three years or with fine which shall not be less than fifty thousand rupees but which may extend to five lakh rupees, or with both.

Violation & Fines (Listed only few)

Section	Violation	Punishment
56(6)	Failure to comply with the provision relating to transfer and transmission of securities under sub-section (1) to (5)	Fine not less than 25,000 but may be extended to 5 lakh on company and every officer who is in default shall be punishable with imprisonment for a term which may extend to six months or with fine which shall not be less than ten thousand rupees but which may extend to one lakh rupees.
64(2)	Failure to file a notice related to alteration, increase or redemption of share capital along with the altered memorandum with the Registrar	Fine upto Rs.1,000 for each day of default continues, or five lakh rupees, whichever is less on company and person in default.
86	Contravention of any provision of Chapter VI relating to Registration of Charges	Fine not less than Rs.1 lakh but may be extended to Rs.10 lakh on company and every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to six months or with fine which shall not be less than twenty-five thousand rupees but which may extend to one lakh rupees, or with both.
88(5)	Failure to maintain register of members or debenture-holders or other security holders as prescribed	The company and every officer of the company who is in default shall be punishable with fine which shall not be less than fifty thousand rupees but which may extend to three lakh rupees and where the failure is a continuing one, with a further fine which may extend to one thousand rupees for every day, after the first during which the failure continues.
92(5)	Failure of company to file Annual Return	company and its every officer who is in default shall be liable to a penalty of fifty thousand rupees and in case of continuing failure, with further penalty of one hundred rupees for each day during which such failure continues, subject to a maximum of five lakh rupees.

Section	Violation	Punishment
99	Default in holding a meeting of the company in accordance with section 96 or section 97 or section 98 or in complying with any directions of the Tribunal	Fine upto Rs.1 lakh on company & every officer who is in default and further fine up to Rs.5,000 for each day of default in case failure continues
124(7)	Failure to transfer the amount of accumulated profits to unpaid dividend account and violating other provisions of section 124	Fine not be less than Rs.1 lakh but may be extended to Rs.5 lakh or with both (for every officer in default) and for company from Rs.5 lakh to Rs.25 lakh [NCLT for above Rs.5 lakh].
165(6)	Acting as a director of more than 20 companies	penalty of five thousand rupees for each day after the first during which such contravention continues
166(7)	Default in complying with the provisions of this section relating to directors duties	Fine not less than Rs.1 lakh but may be extended to Rs.5 lakh on directors.
172	Contravention of the provisions of Chapter XI relating to appointment and qualifications of directors	Fine not less than Rs.50,000 but may be extended to Rs.5 lakh.
188(5)(i) 188(5)(ii)	Related party transaction in case of other company and listed company	In case of listed company, be punishable with imprisonment for a term which may extend to one year or with fine which shall not be less than twenty-five thousand rupees but which may extend to five lakh rupees, or with both; and In case of any other company, be punishable with fine which shall not be less than twenty-five thousand rupees but which may extend to five lakh rupees.
186(13)	Contravention of the provisions of this section relating to loans and investment	the company shall be punishable with fine which shall not be less than twenty-five thousand rupees but which may extend to five lakh rupees and every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to two years and with fine which shall not be less than twenty-five thousand rupees but which may extend to one lakh rupees.

Section	Violation	Punishment
197(15)	Contravention of the provisions of this section relating to managerial remuneration in case of absence or inadequacy of profits.	Liable to a penalty of one lakh rupees and where any default has been made by a company, the company shall be liable to a penalty of five lakh rupees.
203(5)	Contravention of the provisions of this section relating to appointment of Key Managerial personnel	such company shall be liable to a penalty of five lakh rupees and every director and key managerial personnel of the company who is in default shall be liable to a penalty of fifty thousand rupees and where the default is a continuing one, with a further penalty of one thousand rupees for each day after the first during which such default continues but not exceeding five lakh rupees.]
204(4)	Contravention of the provisions of this section relating to Secretarial Audit for bigger companies.	Fine not less than Rs.1 lakh but may be extended to Rs.5 lakh on the company, every officer of the company and company secretary in practice
206(7)	Failure to furnish any information during inspection or inquiry	Fine up to Rs.1 lakh and further fine up to Rs.500 for each day of default on the company and every officer of the company.
221(2)	Any removal, transfer or disposal of funds, assets, or properties of the company in contravention of the order of the Tribunal under sub-section (1)	Fine not less than Rs.1 lakh but may be extended to Rs.25 lakh on company and and every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to three years or with fine which shall not be less than fifty thousand rupees but which may extent to 5 lakhs rupees or with both.
46(5)	Fraudulently issuing of duplicate share certificates by a company	Fine not less than 5 times the face value of the shares involved in the issue of the duplicate certificate but which may extended to 10 times or Rs.10 crore whichever is higher on company and every officer of the company who is in default shall be liable for action under section 447.

Section	Violation	Punishment
128(6)	Failure to keep proper books of account	Imprisonment upto one year or fine not less than Rs.50,000 but may be extended to Rs.5 lakh or with both (for MD, WTD, CFO etc.)
129(7)	Failure to keep proper financial statement	Imprisonment upto one year or fine not less than Rs.50,000 but may be extended to Rs.5 lakh or with both (the managing director, the whole-time director in charge of finance, the Chief Financial Officer or any other person charged by the Board with the duty of complying with the requirements of this section and in the absence of any of the officers mentioned above, all the directors).
134(8)	Default in complying with the provisions regarding financial statement and Board's report	Fine which shall not be less than fifty thousand rupees but which may extend to twenty-five lakh rupees and every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to three years or with fine which shall not be less than fifty thousand rupees but which may extend to five lakh rupees, or with both.
137(3)	Failure to file financial statements with the Registrar	The company shall be liable to a penalty of one thousand rupees for every day during which the failure continues but which shall not be more than ten lakh rupees, and the managing director and the Chief Financial Officer of the company, if any, and, in the absence of the managing director and the Chief Financial Officer, any other director who is charged by the Board with the responsibility of complying with the provisions of this section, and, in the absence of any such director, all the directors of the company, shall be 7[shall be liable to a penalty of one lakh rupees and in case of continuing failure, with further penalty of one hundred rupees for each day after the first during which such failure continues, subject to a maximum of five lakh rupees.

Section	Violation	Punishment
167(2)	Functioning as a director after vacation of officea	Imprisonment upto one year or fine not less than Rs.1 lakh but may be extended to Rs.5 lakh or with both.
184(4)	Failure to disclose of director's interest and participation in Board meeting by interested director	Imprisonment upto one year or fine not less than Rs.50,000 but may be extended to Rs.1 lakh or with both.
185(4)	Contravention of the provisions of sub-section 1 relating to loans, guarantee or security	(i) the company shall be punishable with fine which shall not be less than five lakh rupees but which may extend to twenty-five lakh rupees; (ii) every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to six months or with fine which shall not be less than five lakh rupees but which may extend to twenty-five lakh rupees; and (iii) the director or the other person to whom any loan is advanced or guarantee or security is given or provided in connection with any loan taken by him or the other person, shall be punishable with imprisonment which may extend to six months or with fine which shall not be less than five lakh rupees but which may extend to twenty-five lakh rupees, or with both.
118(12)	Tampering with the minutes of the proceedings of meeting	punishable with imprisonment for a term which may extend to two years and with fine which shall not be less than twenty-five thousand rupees but which may extend to one lakh rupees.

Section	Violation	Punishment
127	Failure to distribute dividend within thirty days	Imprisonment upto two years and fine not less than Rs.1,000 for each day of failure (for every director) and 18% interest liability on company
182(4)	Political contribution made in contravention of this section	Company shall be punishable with fine which may extend to five times the amount so contributed and every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to six months and with fine which may extend to five times the amount so contributed.
207(4)	Disobeys the direction issued by the Registrar or inspector under this section	The director or the officer shall be punishable with imprisonment which may extend to one year and with fine which shall not be less than twenty-five thousand rupees but which may extend to one lakh rupees.
217(6)	Disobeys the direction issued by the Registrar or inspector under this section in relation to investigation	The director or the officer shall be punishable with imprisonment which may extend to one year and with fine which shall not be less than twenty-five thousand rupees but which may extend to one lakh rupees.
217(8)	Failure to provide information, books or papers, etc. to inspector during investigation	Imprisonment for a term which may extend to six months and with fine which shall not be less than twenty-five thousand rupees but which may extend to one lakh rupees, and also with a further fine which may extend to two thousand rupees for every day after the first during which the failure or refusal continues.

Section	Violation	Punishment
447	Punishment for fraud If the fraud involves public interest	any person who is found to be guilty of fraud 1[involving an amount of at least ten lakh rupees or one per cent. of the turnover of the company, whichever is lower] shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to ten years and shall also be liable to fine which shall not be less than the amount involved in the fraud, but which may extend to three times the amount involved in the fraud: Provided that where the fraud in question involves public interest, the term of imprisonment shall not be less than three years. Provided further that where the fraud involves an amount less than ten lakh rupees or one per cent. of the turnover of the company, whichever is lower, and does not involve public interest, any person guilty of such fraud shall be punishable with imprisonment for a term which may extend to five years or with fine which may extend to 2[fifty lakh rupees] or with both.
449	Intentionally gives false evidence	Imprisonment not less than three years but may be extended to seven years and fine upto Rs.10 lakh.

FORM MBP - 1
Notice of interest by director

[Pursuant to section 184 (1) and rule 9(1)]

To
The Board of Directors
……..……Limited

Dear Sir(s)

I, ..., son/daughter/spouse of ……....……….. resident of ………..……. being a director in the company hereby give notice of my interest or concern in the following company or companies, bodies corporate, firms or other association of individuals:-

S. No	Names of the Companies /bodies corporate/ firms/ association of individuals	Nature of interest or concern / Change in interest or concern	Shareholding	Date on which interest or concern arose / changed

Place: Signature:

Date: MD/Director/Secretary/Whole time Director

Form DIR-2

Consent to act as a Director of a company

[Pursuant to section 152(5) and rule 8 of Companies (Appointment and Qualification of Directors) Rules, 2014]

To

....(Name of the company)

.... (Address of the company)

Subject: Consent to act as a director.

I ……………………, hereby give my consent to act as director of ……..…..
(Name of he company), pursuant to sub-section (5) of section 152 of the Companies Act, 2013 and certify that I am not disqualified to become a director under the Companies Act, 2013.

1. Director Identification Number (DIN) :
2. Name (in full) :
3. Father's Name (in full) :
4. Address :
5. E-mail id :
6. Mobile no. :
7. Income-tax PAN. :
8. Occupation :
9. Date of birth :
10. Nationality :
11. No. of companies in which I am already a Director and out of such companies the names of the companies in which I am a Managing Director, Chief Executive Officer, Whole time Director, Secretary, Chief Financial Officer, and Manager.

12. Particulars of membership No. and Certificate of practice No. if the applicant is a member of any professional Institute. Specifically state NIL if none.

DECLARATION

I declare that I have not been convicted of any offence in connection with the promotion, formation or management of any company or LLP and have not been found guilty of any fraud or misfeasance or of any breach of duty to any company under this Act or any previous company law in the last five years. I further declare that if appointed my total Directorship in all the companies shall not exceed the prescribed number of companies in which a person can be appointed as a Director.

Date: Signature: ……........………................……….

Place: Designation: …………………..........................

Attachments:

1. Proof of identity;

2. Proof of residence;

CS P Eswaramoorthy

Mr. P Eswaramoorthy is a fellow member of the Institute of Company Secretaries of India. He holds a bachelor's degrees in Science and Law. He started his career as Company Secretary in ELGI Software and Technologies Limited (renowned SARA ELGI Group of Companies) for 5 years and worked as Company Secretary in M/s Adwaith Group Companies for one year.

He started his practice in the year 2006. He specializes in Corporate Laws, SEBI, FEMA, Intellectual Property Laws, Joint Ventures, Mergers, Demergers, etc He speaks regularly in workshops and seminars on various subjects in the areas of Corporate Laws, Economic Legislations, Securities Laws, Intellectual Property Laws, Mergers and Amalgamations, Demergers and spin-offs, Legal Due Diligence Audits.

He is a Practicing Company Secretary and Qualified Insolvency Professional. He is a Registered Trademark Agent and filed more than 500 TM Applications and a Legal advisor by passion, has been into the industry of legal services for past a decade now.

He is a past Chairman of the Coimbatore Chapter of ICSI and Management Committee member and Faculty member at Coimbatore ICSI chapter since 2002. His prudent sessions and seminars at the corporate level, Institutions and colleges have embarked a new phase of Corporate Compliance & Governance in true letter and Spirit in minds of students and corporate world.

Appeared before SEBI, TM Registry, NCLT, RD, MCA for various hearings and cases.

Handling Internal Audit and Management Audit for various Companies.

Asvika Corporate Consultancy Services Private Limited was established with a vision "to be one of the most preferred advisory firm in India known for its multi-faceted customized services to clients irrespective of their nature of business and size" with the mission of making it easier for Entrepreneurs to start their business easily and grow their business at an affordable cost. Our aim is to help the entrepreneurs on the legal and regulatory requirement throughout the business lifecycle. We offer support at every stage and ensures the business remains compliant and continually growing.

ASVIKA
CORPORATE CONSULTANCY SERVICES (P) LTD
Transforming Corporates to the best of Governance

No.44 & 44/1, 5th Street, Ramalinga Jothi Nagar, Near Corporation Office,
Nanjundapuram Road, Ramanathapuram, Coimbatore - 641 045.

0422 - 2322333 asvikacorporate@gmail.com www.asvika.com