

**READY RECKONER**  
**FOR**  
**PRIVATE COMPANIES**



**THE INSTITUTE OF  
Company Secretaries of India**

**IN PURSUIT OF PROFESSIONAL EXCELLENCE**  
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## PREFACE

*"Compliance is just a subset of governance and not the other way around."*

*~ Pearl Zhu ~*

The above statement makes it evident that governance is at the core of any business enterprise. The significance of complying with a legal structure in place is equally vital for both the public and private companies. The Companies Act, 2013 preceded by the Companies Act, 1956 has sought to formulate the legal structure keeping in view the differences between the various forms of corporations.

In today's era, where majority of active registered companies with MCA are private companies, providing a strong foundation of governance and compliance in the private corporate sector has gained paramount significance. Enacted in 2013, the Companies Act has brought about various changes as regards formulation of Rules for providing procedural clarity; rolling out notifications for exempting certain classes of companies from the applicability of provisions of the Act that ostensibly hindered their business activity, so on and so forth. Private companies have always held a special status during such a transformation.

With a number of provisions being applicable to private companies and any breach thereof attracting penalty, it becomes imperative to bring out a comprehensive document which acts as a ready reckoner and aids in making regulatory compliances smoother, thereby giving the much needed focus to private companies. This Ready Reckoner aims to give an easy to follow approach *vis-à-vis* the procedures and compliances to be observed by a private company under the Companies Act, 2013. The Reckoner has some of the checklists, chapter-wise compliances to be observed, and exemptions available etc. to the private companies.

I commend the dedicated efforts of CS Deepa Khatri, Deputy Director, in writing the manuscript of this publication with the able guidance of CS Banu Dandona, Joint Director in the Directorate of Corporate Law and Governance, under the leadership of CS Dinesh Chandra Arora, Secretary, ICSI.

I place on record my sincere thanks to CS Mahesh Athavale, Past President, ICSI; CS V Sreedharan, Past Council member and CS Devika Sathyanarayana, Practising Company Secretary for their valuable inputs while reviewing the the draft of this publication.

I am confident that this '*Ready Reckoner for Private Companies*' will be found useful by all practitioners in the efficient and effective compliance with the related provisions.

There is always scope for improvement. I would personally be grateful to readers and users for their suggestions/comments for bringing about further refinement in the Ready Reckoner.

**CS (Dr.) Shyam Agrawal**

*President*

The Institute of Company Secretaries of India

*Place:* New Delhi

*Date:* June 21, 2017

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## SIMPLIFIED CHARTS

### INTRODUCTION

Private companies have a critical role to play in the growth of the economy. Most of the start-ups are floated as private companies. The impact of regulatory oversight on the cost of doing business for companies is an important consideration while framing the laws. Regulators always strive to achieve a balance so that a reasonable level of oversight is achieved without excess cost of compliances.

This publication provides an overview of chapter-wise compliances by the Private Companies under the Companies Act, 2013.

### List of annual compliances by a Private Company under the Companies Act, 2013

Sl. No.	Title	Section & Rules	Particulars of Compliances	
1.	Disclosures by a Director of his Interest	184 (1) & Rule 9(1) of Companies (Meetings of Board and its Powers) Rules, 2014	<b>Form MBP- 1</b>	Every director shall at the first meeting of the Board in which he participates as a director and thereafter at the first meeting in every financial year or whenever there is any change in the disclosures already made, then at the first Board meeting held after such change, should disclose his concern or interest in other entities which shall include the shareholding.
2.	Disqualification of Directors	164(2) & 143(3)(g) & Rule 14(1) of Companies (Appointment of Directors) Rules, 2014	<b>Form DIR-8</b>	Every director shall inform the company concerned about his disqualification under sub-section (2) of section 164, if any, before he is appointed or re-appointed.

3.	Annual Return	92 (4) & (1) & Rule 11 (1) of Companies (Management and Administration) Rules, 2014	<b>E-form MGT-7</b>	<p>Every Company shall file its Annual Return within 60 days of holding the AGM or where no AGM is held in any year within 60 days from the date on which the AGM should have been held together with the statement specifying the reasons for not holding the AGM.</p> <p>Annual Return of Every Private Company shall be signed by a director and the company secretary, or where there is no company secretary, by a company secretary in practice.</p>
4.	Extract of the annual return	92(3) & 134(3)(a) & Rule 12(1) of the Companies (Management and Administration) Rules, 2014.	<b>Form MGT- 9</b>	<p>An extract of the annual return shall form part of the Board's report. The Companies (Amendment) Bill, 2016 proposes to substitute the existing clause (a) of section 134 (3) with the following clause -</p> <p>"(a) the web address, if any, where annual return referred to in sub-section (3) of section 92 has been placed".</p> <p>Thereafter, only the placing of annual return on the website of the company and the web address where annual return has been placed will be required to be mentioned in the Board's Report.</p> <p>Section 92 (3) shall not apply in case of Specified IFSC Private Company – vide Notification No. G.S.R. 9 (E) Dated 4th January, 2017.</p>
5.	Financial Statements	137 & Rule 12(1) of Companies (Accounts) Rules, 2014	<b>E-form AOC-4 &amp; E-form</b>	Company is required to file its financial statements, including consolidated financial statement along with all the documents

			<p><b>AOC-4 CFS</b></p> <p>required to be or attached to such financial statements, duly adopted at the AGM of the company with the Registrar within 30 days of the date of AGM or in case financial statements are adopted in the adjourned AGM, within 30 days of the date of adjourned AGM.</p> <p>If annual general meeting is not held for any year, the financial statements along with the documents required to be attached under sub-section (1) of section 137 duly signed along with the statement of facts and reasons for not holding the annual general meeting shall be with the Registrar within 30 days of the last date before which the annual general meeting should have been held.</p>
6.	Certification of Annual Return	92 & Rule 11(2) of Companies (Management and Administration) Rules, 2014	<p><b>Form MGT-8</b></p> <p>The annual return filed by a listed company or a company having paid up share capital of Rs. 10 Crores or more <b>or</b> turnover of Rs. 50 crores or more shall be certified by a Company Secretary in Practice.</p>
7.	Boards' Report	134 & Rule 8 of the Companies (Accounts) Rules, 2014.	<p>Directors' Report shall be prepared in a manner which shall include all the information required under Section 134. It should be signed by the "Chairperson" authorized by the Board, and where he is not so authorized, by at least 2 Directors one of whom shall be a managing director or by the director where there is one director.</p> <p>In case of a Specified IFSC private company, if any information listed in this sub-section is provided in the financial statement, the company may not include such information</p>

			in the report of the Board of Directors. (Vide Notification No. G.S.R. 9(E) dated 4 <sup>th</sup> January, 2017)
8.	Circulation of Financial Statement & other relevant Documents	136	<p>Company shall send to all the members of the Company, all trustees for the debenture holders and to all persons being the persons so entitled, copy of the (approved) Financial Statements (including consolidated Financial Statements, if any, auditor's report and every other document required by law to be annexed/ attached to the financial statements) at least 21 clear days before the Annual General Meeting.</p> <p>Except in case AGM is called on shorter notice pursuant to section 101(1). In case of private company, Section 101 shall apply, unless otherwise specified in such section or the articles of the company provide otherwise. (Vide Notification No. G.S.R. 464 (E) dated 5<sup>th</sup> June, 2015 regarding exemption to private companies)</p>
9.	Notice of AGM	101 & Rule 18 of the Companies (Management and Administration) Rules, 2014 & SS-2	<p>Every Notice of Annual General Meeting shall be prepared as per Section 101 of Companies Act, 2013 and Secretarial Standard – 2.</p> <p>In case of private company - Section 101 shall apply, unless otherwise specified in such section or the articles of the company provide otherwise. - Notification No. G.S.R.464 (E) dated 5th June, 2015.</p>
10.	Sending of Notice of AGM	101 & SS – 2	<p>Notice of Annual General Meeting shall be sent to all the Directors, Members, Auditors, legal representative of any deceased member and the assignee of an insolvent member.</p> <p>In case of private company - Section 101 shall apply, unless otherwise specified in such section or the articles of the company provide otherwise. - Notification No. G.S.R.464 (E) dated 5th June, 2015.</p>

11.	Board Meetings	173 & SS-1	Every Company shall hold a minimum number of 4 meetings of its Board of Directors every year in such a manner that maximum gap between two meetings should not be more than 120 days. Company should hold at least 1 Board Meeting in every quarter of each calendar year.
12.	Notice of Board Meeting	173 (3) & SS-1	<p>A meeting of the Board shall be called by giving not less than 7 days' notice in writing to every director at his address registered with the company and such notice shall be sent by hand delivery or by post or by electronic means.</p> <p>However, meeting of the Board may be called at shorter notice to transact urgent business.</p>
13.	Appointment of Auditor	139(1) & Rule 4(2) of the Companies (Audit and Auditors) Rules, 2014	<p><b>E-form ADT-1</b> Auditor shall be appointed for 5 years in the AGM. The company shall inform the auditor concerned of his or its appointment, and also file a notice of such appointment with the Registrar within fifteen (15) days of the meeting in which the auditor is appointed in E-form ADT-1.</p> <p>In case of Specified IFSC Private Company- the notice of auditor's appointment shall be filed with the Registrar within <b>30 days</b> of the meeting in which the auditor is appointed.</p> <p>(Vide Notification No. G.S.R. 9 (E) Dated 4th January, 2017).</p> <p>The company shall place the matter relating to such appointment for ratification by members at every AGM.</p>

14.	Appointment of Company Secretary	203 & Rule 8A of the Companies (Appointment and Remuneration) Rules, 2014.	Private Company having paid up share capital of Rs. 5 crores or more is required to appoint a whole time Company Secretary.
15.	Register of members	88 & Rule 3 of the Companies (Management and Administration) Rules, 2014. Form MGT.1 & Form MGT.2	Company shall keep & maintain the following mandatory Registers: <ul style="list-style-type: none"> <li>• Register of Members,</li> <li>• Register of debenture-holders,</li> <li>• Register of any other security holders.</li> </ul> List of registers, returns and other records required to be kept by private company is given later in the chapter.

**List of annual compliances by Small Company under the Companies Act, 2013**

Sl. No.	Title	Section & Rules	Particulars of Compliances	
1.	Disclosures by a Director of his Interest	184(1) & Rule 9(1) of Companies (Meetings of Board and its Powers) Rules, 2014.	<b>Form MBP-1</b>	Every director shall at the first meeting of the Board in which he participates as a director and thereafter at the first meeting in every financial year or whenever there is any change in the disclosures already made, then at the first Board meeting held after such change, disclose his concern or interest in other entities which shall include the shareholding.
2.	Disqualification of Directors	164(2) & 143(3)(g) & Rule 14(1) of Companies (Appointment of Directors) Rules, 2014	<b>Form DIR-8</b>	Every director shall inform to the company concerned about his disqualification under sub-section (2) of section 164, if any, before he is appointed or re-appointed.
3.	Annual Return	92(4) & (1) & Rule 11 (1) of Companies	<b>E-form MGT-7</b>	Every Company shall file its Annual Return within 60 days of holding of AGM or where no AGM is held in

		(Management and Administration) Rules, 2014		<p>any year within 60 days from the date on which the AGM should have been held together with the statement specifying the reasons for not holding the AGM.</p> <p>Annual Return of every Small Company shall be signed by the company secretary, or where there is no company secretary, by the director of the company.</p>
4.	Extract of the annual return	92(3) & 134(3)(a) & Rule 12(1) of the Companies (Management and Administration) Rules, 2014.	<b>Form MGT- 9</b>	<p>An extract of the annual return shall form part of the Board's report.</p> <p>The Companies (Amendment) Bill, 2016 proposes to substitute the existing sub-section (3) of Section 92 with the following sub-section:- Every company shall place a copy of the annual return on the website of the company, if any, and the web-link of such annual return shall be disclosed in the Board's report.</p> <p>The Companies (Amendment) Bill, 2016 proposes to substitute the existing clause (a) of section 134 (3) with the following clause - “(a) the web address, if any, where annual return referred to in sub-section (3) of section 92 has been placed.”</p> <p>Thereafter, only the placing of annual return on the website of the company and the web address where annual return has been placed will be required to be mentioned in the Board's Report.</p>
5.	Financial Statement	137 & Rule 12(1) of Companies (Accounts) Rules, 2014	<b>E-form AOC-4 &amp; E-form</b>	Company is required to file its financial statements, including consolidated financial statement along with all the documents

			<p><b>AOC-4</b> <b>CFS</b></p> <p>required to be or attached to such financial statements, duly adopted at the AGM of the company with the Registrar within 30 days of the date of AGM or in case financial statements are adopted in the adjourned AGM, within 30 days of the date of adjourned AGM.</p> <p>If annual general meeting is not held for any year, the financial statements along with the documents required to be attached under sub-section (1) of section 137 duly signed along with the statement of facts and reasons for not holding the annual general meeting shall be with the Registrar within 30 days of the last date before which the annual general meeting should have been held.</p>
6.	Board's Report	134 & Rule 8 of the Companies (Accounts) Rules, 2014	<p>Board's Report shall be prepared mentioning all the information required to be included in it for Small Company under Section 134. It should be signed by the "Chairperson" authorized by the Board, where he is not so authorized by at least 2 Directors one of whom shall be a managing director or by the director where there is One (1) director.</p> <p>In case of a Specified IFSC private company, if any information listed in this sub-section is provided in the financial statement, the company may not include such information in the report of the Board of Directors. (refer Notification dated 4<sup>th</sup> January, 2017)</p>
7.	Circulation of Financial Statement & other	136	Company shall send to all the members of the Company, all trustees for the debenture holders and to all persons being the persons so entitled, copy of the (approved) Financial

	relevant documents		<p>Statements (including consolidated Financial Statements, if any auditor's report and every other document required by law to be annexed/ attached to the financial statements) at least 21 clear days before the Annual General Meeting.</p> <p>(Except in case of AGM is called on Shorter Notice pursuant to section 101(1)).</p> <p>In case of private company which is a small company, Section 101 shall apply, unless otherwise specified in respective sections or the articles of the company provide otherwise.</p>
8.	Notice of AGM	101 & Rule 18 of the Companies (Management and Administration) Rules, 2014 & SS- 2	Every Notice of Annual General Meeting shall be prepared as per Section 101 of Companies Act, 2013 and Secretarial Standard – 2.
9.	Sending of Notice of AGM	101 & SS – 2	Notice of Annual General Meeting shall be sent to all the Directors, Members, Auditors, legal representative of any deceased member and the assignee of an insolvent member.
10.	Board Meetings	173 (5) & SS-1	Every Small Company shall hold at least one (1) meeting of the Board of Directors in each half of a calendar year and the gap between the two meetings shall not be less than 90 days.
11.	Notice of Board Meeting	173 (3) & SS-1	<p>A meeting of the Board shall be called by giving not less than 7 days' notice in writing to every director at his address registered with the company and such notice shall be sent by hand delivery or by post or by electronic means.</p> <p>However, meeting of the Board may be called at shorter notice to transact urgent business.</p>

12.	Appointment of Auditor	139(1) & Rule 4(2) of the Companies (Audit and Auditors) Rules, 2014.	<b>E-form ADT-1</b>	<p>Auditor shall be appointed for 5 years in the AGM. The company shall inform the auditor concerned of his or its appointment, and also file a notice of such appointment with the Registrar within fifteen (15) days of the meeting in which the auditor is appointed in E-form ADT-1.</p> <p>The company shall place the matter relating to such appointment for ratification by members at every AGM.</p> <p>Companies (Amendment) Bill, 2016 proposed to omit the requirement of ratification by members at every AGM.</p>
13.	Register of members	88 & Rule 3 of the Companies (Management and Administration) Rules, 2014. Form MGT.1 & Form MGT.2		<p>Company shall keep &amp; maintain the following mandatory Registers:</p> <ul style="list-style-type: none"> <li>• Register of Members,</li> <li>• Register of debenture-holders,</li> <li>• Register of any other security holders.</li> </ul> <p>List of registers, returns and other records required to be kept by private company is given later in the chapter.</p>

**List of annual compliances by One Person Company (OPC) under the Companies Act, 2013**

Sl. No.	Title	Section & Rules	Particulars of Compliances	
1.	Disclosures by a Director of his Interest	184(1) & Rule 9(1) of Companies (Meetings of Board and its Powers) Rules, 2014	<b>Form MBP-1</b>	Every director shall at the first meeting of the Board in which he participates as a director and thereafter at the first meeting in every financial year or whenever there is any change in the disclosures already made, then at the first Board meeting held after such change, disclose his concern or interest in other entities which shall include the shareholding.

2.	Disqualification of Directors	164(2) & 143(3)(g) & Rule 14(1) of Companies (Appointment of Directors) Rules, 2014	<b>Form DIR-8</b>	Every director shall inform the company concerned about his disqualification under sub-section (2) of section 164, if any, before he is appointed or re-appointed.
3.	Meaning of AGM for the OPC means "Resolution passed for the Ordinary Business entered into the Minute Book. In case of OPC, there is no need to hold AGM because there is only one Member.			
4.	Annual Return	92(4) & (1) & Rule 11(1) of Companies (Management and Administration) Rules, 2014	<b>E-form MGT-7</b>	OPC shall file its Annual Return within 60 days of entry of ordinary resolution in Minute Book. In Case of OPC, there is no need to hold AGM. Annual Return of every One Person Company shall be signed by the company secretary, or where there is no company secretary, by the director of the company.
5.	Financial Statement	137 & proviso 3 to Rule 12(1) of Companies (Accounts) Rules, 2014	<b>E-form AOC-4</b>	One Person Company shall file a copy of the financial statements duly adopted by its member, along with all the documents which are required to be attached to such financial statements, within 180 days from the closure of the financial year.
6.	Directors' Report	134(4)		Directors' Report shall be signed by only one director, for submission to the auditor for his report thereon. In case of OPC, the report of the Board of Directors to be attached to the financial statement under section 134 means a report containing explanations or comments by the Board on every qualification, reservation or adverse remark or disclaimer made by the auditor in his report.
7.	Board Meetings	173 (5) & SS-1		Every One Person Company shall hold at least one (1) meeting of the Board of Directors in

			each half of a calendar year and the gap between the two meetings shall not be less than 90 days. However, provisions of section 173 (5) and section 174 relating to quorum shall not apply to One Person Company in which there is only one (1) director on its Board of Directors.
8.	Notice of Board Meeting	173 (3) & SS-1	A meeting of the Board shall be called by giving not less than 7 days' notice in writing to every director at his address registered with the company and such notice shall be sent by hand delivery or by post or by electronic means. However, meeting of the Board may be called at shorter notice to transact urgent business.
9.	Appointment of Auditor	139(1) & Rule 4(2) of the Companies (Audit and Auditors) Rules, 2014	<b>E-form ADT-1</b> Auditor shall be appointed for 5 years. The company shall inform the auditor concerned of his or its appointment, and also file a notice of such appointment with the Registrar within fifteen (15) days of the meeting in which the auditor is appointed in e-Form ADT-1.
10.	<b>Notes:</b>		<ul style="list-style-type: none"> <li>- In an OPC in which there is only one Director, Secretarial Standard- 1 will not apply.</li> <li>- OPC is not required to hold AGM so Secretarial Standard- 2 is not applicable to OPC.</li> <li>- Section 98 and Section 100 to Section 111 are not applicable on One Person Company.</li> <li>- No need of preparation of Cash Flow Statement, in case of OPC.</li> </ul>

**REGISTER, RETURNS, BOOKS AND OTHER RECORDS TO BE KEPT BY PRIVATE COMPANY**

<b>Section/Rule</b>	<b>Particulars</b>	<b>Form No.</b>	<b>Place where to be kept</b>	<b>Period for which to be kept</b>	<b>Custodian</b>
Rule 7 of the Companies (Registration Offices & Fees) Rules, 2014	Original Documents duly stamped relating to incorporation and matters incidental thereto and changes in any of the clauses of MOA/AOA  In any other cases, the relevant / related documents		Not specified  Not specified	Permanently  8 years from the date of filing of documents	Not specified
42(9) and Rule 14(3) of Companies (Prospectus and Allotment of Securities) Rules, 2014	Maintenance of complete record of Private Placement Offers	PAS-5	Not specified	Not specified	Not specified
46(3) and Rule 6 (3) (a) of Companies (Share Capital and Debentures) Rules, 2014	Register of Renewed and Duplicate Share Certificates- Entries made should be authenticated by company secretary or the person	SH-2	Registered Office or at such other place where the Register of Members is kept	Permanently	Company Secretary or any other person authorized by the Board

	authorized by the Board for sealing and signing the share certificate under Rule 5(3) of Chapter IV.				
54 and Rule 8(14) (a) of Companies (Share Capital and Debentures) Rules, 2014)	Register of Sweat Equity Shares-Entry shall be made forthwith on issue of sweat equity shares u/s.54. Authentication of the entries be made by company secretary or by any other person authorized by the Board in this behalf.	SH-3	Registered Office or such other place as the Board may decide.	Not specified	Not specified
62(1)(b) and Rule 12 (10) (a) of Companies (Share Capital and Debentures) Rules, 2014	Register of Employees Stock Options-Entry shall be made forthwith on issue of shares to employees under employees' stock option scheme u/s. 62(b). Authentication of the entries be made by company	SH-6	Registered Office or such other place as the Board may decide	Not specified	Not specified

	secretary or by any other person authorized by the Board in this behalf.				
68(9) and Rule 17 (12) (a) of Companies (Share Capital and Debentures) Rules, 2014	Register of Shares or other Securities bought back. Authentication of the entries be made by company secretary or by any other person authorized by the Board in this behalf.	SH-10	Registered Office	Not specified	Company Secretary or any other person authorized by the Board
73, 76 and Rule 14 (1) of Companies (Acceptance of Deposits) Rules, 2014	Register of Deposits-Entry should be made within 7 days of the issue of duly authenticated receipt in this regard by director, secretary or the person authorized by the board in this behalf.	Particulars specified in Rule 14	Registered Office	For not less than 8 years from the FY in which the latest entry is made in the register	Not specified
85 and Rule 10 (1) of Companies (Registration of Charges) Rules, 2014	Register of Charges and Instrument of Charges Entries shall be made forthwith after the	CHG-7	Registered Office	Permanently and Instrument creating a charge or modification thereon is to	Not specified

	<p>creation, modification or satisfaction of the charge.</p> <p>Authentication of the entries shall be made by director, secretary or person authorized by the Board in this behalf</p>			<p>be preserved for 8 years from the date of satisfaction of charge</p>	
<p>88 and Rule 3 (1), 5(1) &amp; (2), 6, 8 &amp; 15 of Companies (Management and Administration) Rules, 2014</p>	<p>Register of Members (with Index of names if no. of members <math>\geq</math> 50)</p> <p>Entries shall be made within 7 days from the date of approval of the allotment or transfer of shares by the Board or its duly constituted committee.</p> <p>Authentication of entries be made by the company secretary or the person authorized by the board along with the date of board resolution for such authorization.</p>	MGT-1	<p>Registered Office or by passing of special resolution in the GM at any other place within the city, town or village in which the registered office of the company is situated or more than 1/10<sup>th</sup> of the total members entered in the register of members resides.</p>	<p>Permanently</p>	<p>CS or any other person authorised by Board for such purpose</p>

88 and Rule 4 & 15 (2) of Companies (Management and Administration) Rules, 2014	Register of Debenture holders/other securities holders with index of names for each type of debentures or other security	MGT-2	Registered Office	8 years from the date of redemption of debentures or securities	CS or any other person authorised by Board for such purpose
88 and Rule 7 & 15 of Companies (Management and Administration) Rules, 2014	Foreign Register of Members	MGT-1	[In any country outside India]	Permanently, unless it is discontinued and all the entries are transferred to any other foreign register or to the principal register.  Duplicate Register of every foreign register duly entered up from time to time shall be kept at the registered office of the company	CS or person authorised by the Board
88 and Rule 7 & 15 of Companies (Management and Administration) Rules, 2014	Foreign Register of Debenture holders/other security holders with index of names	MGT-2	[In any country outside India]	8 years from the date of redemption of debentures or securities	CS or any other person authorised by Board

				Duplicate Register of every foreign register duly entered up from time to time shall be kept at the registered office of the company	
92 and Rule 11 & 15(3) of Companies (Management and Administration) Rules, 2014	Annual Return and attachments	MGT-7	Registered Office	8 years from the date of filing with the Registrar	Not specified
<p>Proviso to Section 94 (1) - Registers or copies of return may also be kept at any other place in India in which more than 1/10<sup>th</sup> of the total number of members entered in the register of members reside, if approved by a special resolution passed at a general meeting of the company and the Registrar has been given a copy of the proposed special resolution in advance. (It should be filed with the Registrar in e-form MGT-14 at least one day before the date of GM.)</p>					
105(7) and Rule 19 of Companies (Management and Administration) Rules, 2014	Proxy form	MGT-11	Not specified	Not specified In case of private company - Section 105 shall apply, unless otherwise specified in that section or the articles of the company provide	Not specified

				otherwise. - Notification No. GSR 464(E) dated 5th June, 2015.  This section is not applicable to OPC.	
118 and Rule 25 of Companies (Management and Administration) Rules, 2014	Minutes (General Meetings, Class Meetings of Shareholders, Creditors, Board & Committee Meetings or Resolution passed by Postal Ballot)	No format speci- fied	Registered Office or such other place as Board may decide	Permanently	CS or any other director duly authorised by the Board
Regulation 65- Table F- Schedule I & SS-1	Attendance Register - Board & Committee Meetings	No format speci- fied	Not specified	Not specified	Not specified
118 and Rule 25 of Companies (Management and Administration) Rules, 2014	Minutes (General Meeting, Class of Shareholders, Creditors or Resolution passed by Postal Ballot)	No format speci- fied	Registered Office	Permanently	CS or any other director authorised by the Board
128 and 129, Schedule III	Books of Accounts (together with the vouchers to any entry in such books of account)	Sche- dule III	Registered Office	8 years immediately preceding the financial year.  All or any of	Not specified

				the books of account and other relevant papers may be kept at such other place in India as the BOD may decide and where such a decision is taken, the company shall, within 7 days thereof, file with the Registrar a notice in writing giving the full address of that other place in Form AOC-5.	
170 and Rule 17 of Companies (Appointment and Qualification of Directors) Rules, 2014	Register of Directors & Key Managerial Personnel and their shareholding	Particulars specified in Rule 17	Registered Office	Not specified	Not specified
184(1) and Rule 9(1) of Companies (Meetings of Board and its Powers) Rules, 2014	Notice of interest by Director	MBP-1	Registered Office	8 years from the end of financial year to which it relates	CS of company or any other person authorised by the Board

186(9) and Rule 12(1) of Companies (Meetings of Board and its Powers) Rules, 2014	Register of Loans, Guarantee, Security and in respect of Acquisition made by the company	MBP-2	Registered Office	Permanently	CS of company or any other person authorised by the Board for this purpose
187(3) and Rule 14(1) of Companies (Meetings of Board and its Powers) Rules, 2014	Register of Investment not held in its own name by the company	MBP-3	Registered Office	Permanently	CS of company or if there is no CS, any director or any other officer authorised by the Board for this purpose
189(1) and Rule 16 of Companies (Meetings of Board and its Powers) Rules, 2014	Register of Contracts or arrangements with related party and with Bodies corporate etc. in which directors are interested	MBP-4	Registered Office	Permanently	CS of company or any other person authorised by the Board for this purpose

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#### DISCLOSURES TO BE MADE AT WEBSITE OF A PRIVATE COMPANY

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It is not mandatory for a private company to maintain a website. In case, the company has maintained a website, then the following disclosures are required to be made at its website:

Section/ Rule	Purpose	Mode
Section 8 and Rule 22 of the Companies (Incorporation) Rules, 2014	Companies registered under section 8 seeking conversion into any other kind	Notice in Form INC-19 shall be published on the website of the Company, if any, and as may be notified or directed by the Central Government.

Section 12 and Rule 26 of the Companies (Incorporation) Rules, 2014	Publication of name by company	Every company which has a website for conducting on line business or otherwise, shall disclose/publish its name, address of its registered office, the Corporate Identity Number, Telephone number, fax number if any, email and the name of the person who may be contacted in case of any queries or grievances on the landing/ home page of the said website.
Rule 4(3) of the Companies (Acceptance of Deposits) Rules, 2014	Circular For Inviting Deposits from the public	Every Company inviting deposits from the public shall upload a copy of the circular on its website, if any. In case of private company - <i>Clause (a) to (e) of Sub-section 2 of Section 73*</i> shall not apply to Private Companies which accepts from its members monies not exceeding 100%, of aggregate of the paid up share capital and free reserves, and such company shall file the details of monies so accepted to the Registrar in such manner as may be specified. - Notification No. G.S.R.464 (E) dated 5th June, 2015. The requirement of publishing a circular pursuant to Section 73 (2) (a) also shall not apply in such a case.
Rule 10 of the Companies (Management and Administration) Rules, 2014	Closure of Register of Members or Debenture Holders or other Security Holders	The company shall publish notice at least seven days prior to such closure as may be specified by SEBI in case of a listed company or intends to get its securities listed on the website as may be notified by the Central Government and on the website, if any, of the Company.  Not Applicable to a private company if the notice has been served on all members of the private company not less than seven days prior to closure of the register of members or debenture holders or other security holders.

\*Refer MCA Notification dated 13th June, 2017, which amends the previous exemption notification for private companies dated 5th June, 2015 – Page No. 41.

Section 101 & Rule 18(3) (ix) of the Companies (Management and Administration) Rules, 2014	Notice of the General Meeting	<p>The notice of the general meeting of the Company shall be simultaneously placed on the website of the Company and on the website as may be notified by the Central Government.</p> <p>In case of private company - Section 101 shall apply, unless otherwise specified in this section or the articles of the company provide otherwise. – (Notification No. G.S.R.464(E) dated 5th June, 2015).</p> <p>Section 122 provides that the provisions of section 101 shall not apply to a One Person Company.</p>
Section 110 & Rule 22 (4) & 22 (13) & 22 (16) of the Companies (Management and Administration) Rules, 2014	Postal Ballot	<p>The notice of the postal ballot shall be placed on the website of the company forthwith after the notice is sent to the members and such notice shall remain on such website till the last date for receipt of the postal ballots from the members. The results of the postal ballot shall be declared by placing it, along with the scrutinizer's report, on the website of the company.</p> <p>Note : One Person Company and other companies having members up to 200 are not required to transact any business through postal ballot.</p>
Section 115 & Rule 23(4) of the Companies (Management and Administration) Rules, 2014	Resolutions Requiring Special Notice	Where it is not practicable to give the notice in the same manner as it gives notice of any general meetings, such notice shall be posted on the website, if any, of the company.
Section 124(2)	Unpaid Dividend Account	The Company shall, within a period of 90 days of making any transfer of an amount under section 124(1) to the Unpaid Dividend Account, prepare a statement containing the names, their last known addresses and the unpaid dividend to be paid to

		each person and place it on the website of the Company, if any, and also on any other website approved by the Central Government for this purpose, in such form, manner and other particulars as may be prescribed.
Section 135(4) and Rule 9 of the Companies (Corporate Social Responsibility Policy) Rules, 2014	Disclosures about Corporate Social Responsibility Policy (by a company to whom CSR is applicable)	The Board of every Company shall disclose contents of Corporate Social Responsibility Policy in its report and also place it on the Company's website, if any. In case of Specified IFSC Private Company - Section 135 shall not apply for a period of five years from the commencement of business of a Specified IFSC private company (refer Notification No.G.S.R.9(E) Dated 4th January, 2017)
Section 136(1)	Right of Member to Copies of Audited Financial Statement	Every company having a subsidiary or subsidiaries shall place separate audited accounts in respect of each of its subsidiary on its website, if any.
Section 168 & Rule 15 of the Companies (Appointment and Qualification of Directors) Rules, 2014	Notice of Resignation of director	The Company shall within 30 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.
Section 230(3) & Rule 7 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016	Advertisement of the notice of the meeting pursuant to exercise of power to Compromise or make arrangements with creditors and members.	The notice of the meeting under section 230(3) of the Act, shall be placed on the website of the company, if any in Form No. CAA.2 at least 30 days before the date fixed for the meeting and in case of listed companies, also on the website of SEBI and recognized stock exchanges where the securities of the company are listed.

**Newspaper Advertisements required to be given/ published by the private companies under the provisions of Companies Act, 2013**

Section	Relevant Rule	Purpose	Mode
8	20(3) of the Companies (Incorporation) Rules, 2014	Application for Grant of License under section 8 by existing company	The company shall within one week from the date of application, publish a notice in Form No. INC.26 at least once in a vernacular newspaper in the principal vernacular language of the district in which the registered office of the proposed company is to be situated or is situated, and circulating in that district, and at least once in English language in an English newspaper circulating in that district.
12(5)	28(2) (a) of the Companies (Incorporation) Rules, 2014	Change in registered office from the Jurisdiction of one Registrar to another within the same state	Publish a notice, at least once in a daily newspaper published in English and in the principal language of that district in which the registered office of the company is situated and circulating in that district.
13(4)	30(6) of the Companies (Incorporation) Rules, 2014	Change in registered office from One State or Union Territory to another	Advertise the application in the Form No.INC.26 in a vernacular newspaper in the principal vernacular language in the district in which the registered office of the company is situated, and at least once in English language in an English newspaper circulating in that district at least 14 days before the date of hearing.
73(2)(a)	4(1) of the Companies (Acceptance of Deposits) Rules, 2014	Acceptance of Deposits	Circular in Form DPT-1 may be published in English language in an English newspaper and in vernacular language in a vernacular newspaper having wide circulation in the State in which the registered office of the company is situated.  In case of private company - <i>Clause (a) to (e) of Sub-section 2 of Section 73*</i> shall not

\*Refer MCA Notification dated 13th June, 2017, which amends the previous exemption notification for private companies dated 5th June, 2015 – Page No. 41.

			apply to Private Companies which accepts from its members monies not exceeding one hundred per cent, of aggregate of the paid up share capital and free reserves, and such company shall file the details of monies so accepted to the Registrar in such manner as may be specified.(Notification No. G.S.R. 464(E) dated 5th June, 2015)
88 (4)	7(5) of the Companies (Management and Administration) Rules, 2014	Closure of Foreign Register	A foreign register shall be open to inspection and may be closed, and extracts may be taken there from and copies thereof may be required, in the same manner, mutatis mutandis, as is applicable to the principal register, except that the advertisement before closing the register shall be inserted in at least two newspapers circulating in the place wherein the foreign register is kept.
91(1)	10(1) of the Companies (Management and Administration) Rules, 2014	Closure of Register of Members or debenture holders, Shareholders or other Security holders	A company should publish a 7 days prior notice for the closure of the register of members or shareholders or other security holders at least once in a vernacular newspaper in the principal vernacular language of the district and having a wide circulation in the place where the registered office of the company is situated, and at least once in English language in an English newspaper circulating in that district and having wide circulation in the place where the registered office of the company is situated
103 (2)		If the Quorum is not present within ½ an hour in respect of meeting of members	Such Meeting shall stand adjourned to the same day in the next week at the same time and place, or to such other date, time and place as the Board may determine by giving not less than three days notice to the members either individually or by publishing an advertisement in the newspapers (one in

			<p>English and one in vernacular language) which is in circulation at the place where the registered office of the company is situated.</p> <p>In case of private company, Section 103 shall apply, unless otherwise specified in such section or the articles of the company provide otherwise vide Notification No. G.S.R.464(E) dated 5<sup>th</sup> June, 2015.</p>
108	20(4)(v) of the Companies (Management and Administration) Rules, 2014	Voting through Electronic means	<p>A company shall cause a public notice by way of an advertisement to be published, immediately on completion of despatch of notices for the meeting under clause (i) of sub-rule (4) but at least twenty-one days before the date of general meeting, at least once in a vernacular newspaper in the principal vernacular language of the district in which the registered office of the company is situated, and having a wide circulation in that district, and at least once in English language in an English newspaper having country-wide circulation, and specifying the matters prescribed in the said sub-rule.</p>
110	22(3) of the Companies (Management and Administration) Rules, 2014	Postal Ballot	<p>An advertisement shall be published at least once in a vernacular newspaper in the principal vernacular language of the district in which the registered office of the company is situated, and having a wide circulation in that district, and at least once in English language in an English newspaper having a wide circulation in that district, about having dispatched the ballot papers and specifying the matters prescribed in the said sub-rule.</p> <p>(Note: One Person Company and other companies having members up to 200 are not required to transact any business through postal ballot.)</p>

115	23(4) of the Companies (Management and Administration) Rules, 2014	Resolution requiring Special Notice	Where it is not practicable to give the notice in the same manner as it gives notice of any general meetings, the notice shall be published in English language in English newspaper and in vernacular language in a vernacular newspaper, both having wide circulation in the State where the registered office of the Company is situated
230(3)	7 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016	Power to compromise or make arrangements with creditors and members	The notice of the meeting under subsection (3) of section 230 of the Act shall be advertised in Form No. CAA.2 in at least one English newspaper and in at least one vernacular newspaper having wide circulation in the state in which the registered office of the company is situated, or such newspapers as may be directed by the Tribunal.

#### EXCEPTIONS, MODIFICATION AND ADAPTATIONS FOR PRIVATE COMPANIES

##### Notification No. G.S.R.464(E) dated 5<sup>th</sup> June, 2015

Sr. No.	Chapter/Section Number/Sub-section(s) in the Companies Act, 2013	Exceptions/Modifications/Adaptations
<b>Chapter 1 Preliminary</b>		
1	Section 2(76) (viii)	<p>Shall not apply with respect to Section 188.</p> <p><b>Note:</b> Section 2(76) defines related party with reference to a company and as per Section 2(76)(viii) the following are considered to be related party.</p> <p>Any company which is -</p> <p>(a) A holding, subsidiary or an associate company of such company or</p> <p>(b) A subsidiary of holding company to which it is also a subsidiary.</p> <p><b>Effect:</b> Section 2(76)(viii) is not applicable to a private company with respect to Section 188 (i.e related party transactions)</p>

		Accordingly a holding/ subsidiary/ associate company of a private limited company or a subsidiary of holding company of a private limited company will not be considered as related party.(Notification No. G.S.R.464(E) dated 5 <sup>th</sup> June, 2015.)
<b>Chapter IV -Share Capital and Debentures</b>		
2	Section 43 & Section 47	<p>Shall not apply where memorandum or articles of association of the Private Company so provides.</p> <p><b>Note:</b> Section 43 deals with kinds of capital and Section 47 deals with voting rights.</p> <p><b>Effects:</b> Memorandum or Articles of Association of a Private Limited Company can provide for different kinds of share capital with differential voting rights.(Notification No. G.S.R.464(E) dated 5<sup>th</sup> June, 2015.)</p>
3	Section 62(1)(a)(i) and Section 62(2)	<p>In clause (a), in sub-clause (i), the following proviso shall be inserted, namely;-</p> <p>Provided that notwithstanding anything contained in this sub-clause and sub-section (2) of this section, in case 90% of the members of a private company have given their consent in writing or in electronic mode, the periods lesser than those specified in the said sub-clause or sub-section shall apply.</p> <p><b>Note:</b> Section 62 deals with further issue of shares. Section 62(1)(a) deals with conditions for sending letter of offer to the existing shareholders. Section 62(1)(a)(i) deals with the time within which the letter of offer is to be accepted by the existing shareholders. According to Section 62(1)(a)(i) the offer shall be made by notice specifying the number of shares offered and limiting a time of not being less than 15 days and not exceeding 30 days from the date of offer within which the offer, if not accepted, shall be deemed to have been declined.</p> <p><b>Effects:</b> In case ninety per cent of the members of a private company have given their consent in writing or in electronic mode, the periods lesser than those specified in the said sub-clause or sub-section shall apply. Accordingly, time limit for acceptance of offer by existing</p>

		shareholders may be less than 15 days if 90% of the members of a private limited company have given their consent either in writing or through electronic mode. The reference to Section 62(1)(a)(i) in Section 62(2) would accordingly apply. (Notification No. G.S.R.464(E) dated 5 <sup>th</sup> June, 2015)
4	Section 62(1)(b)	<p>In clause (b), for the words “special resolution”, the words “ordinary resolution” shall be substituted.</p> <p><b>Note:</b> Section 62(1)(b) requires passing of Special Resolution for offering of further shares to employees subject to passing of special resolution and other conditions prescribed under the rules.</p> <p><b>Effect:</b> For private Limited Companies, passing of ordinary resolution is sufficient. (Notification No. G.S.R.464(E) dated 5<sup>th</sup> June, 2015)</p>
5	Section 67	<p>Shall not apply to private companies –</p> <p>(a) in whose share capital no other body corporate has invested any money;</p> <p>(b) if the borrowings of such a company from banks or financial institutions or any body-corporate is less than twice its paid up share capital or Rs. 50 crore, whichever is lower; and</p> <p>(c) such a company is not in default in repayment of such borrowings subsisting at the time of making transactions under this section.</p> <p><b>Note:</b> Section 67 deals with restrictions on purchase by a company or giving loans by it for purchase of its shares.</p> <p><b>Effects:</b> Private Companies are exempted from Section 67 subject to the following three conditions.</p> <p>(i) a private limited company in whose share capital no other body corporate has invested any money;</p> <p>(ii) Borrowings by such private company from banks or financial institutions or any body-corporate is less than twice its paid up share capital or Rs. 50 crore, whichever is lower; and</p>

		(iii) such a company is not in default in repayment of such borrowings subsisting at the time of making transactions under this section.  (Notification No. G.S.R.464(E) dated 5 <sup>th</sup> June, 2015)
<b>Chapter V - Acceptance of Deposits by Companies</b>		
6	Section 73(2)(a) to (e)*	Shall not apply to a private company which accepts from its members monies not exceeding 100 % of aggregate of the paid up share capital and free reserves, and such company shall file the details of monies so accepted to the Registrar in such manner as may be specified.  <b>Note:</b> Section 73(2) deals with conditions for acceptance of deposits from members.  <b>Effects:</b> Conditions for acceptance of deposits from members is not applicable to a Private Company if the monies accepted does not exceed 100% of aggregate of the paid-up share capital and free reserves, and such company shall file the details of monies so accepted with the Registrar in such manner as may be specified. (Notification No. G.S.R.464(E) dated 5 <sup>th</sup> June, 2015)
<b>Chapter VII - Management and Administration</b>		
7	Section 101 to 107 and Section 109	Shall apply unless otherwise specified in respective sections or the articles of the company provide otherwise.  <b>Note:</b> Articles of Association of a Private Company can have specific provisions with respect to - notice of meeting (Section 101); Statement to be annexed to notice (Section 102); Quorum for meetings (Section 103); Chairman of meetings (Section 104); Proxies (Section 105); restriction on voting rights (Section 106); Voting by show of hands (Section 107); Demand for poll (Section 109).  <b>Effects:</b> Articles of Association of a Private Company may have specific provisions with respect to above mentioned sections.  (Notification No. G.S.R.464(E) dated 5 <sup>th</sup> June, 2015)

\*Refer MCA Notification dated 13th June, 2017, which amends the previous exemption notification for private companies dated 5th June, 2015 – Page No. 41.

8	Section 117(3)(g)	<p>Shall not apply.</p> <p><b>Note:</b> Section 117 deals with the resolutions and agreements to be filed with the Registrar. Section 117(3)(g) deals with the filing of resolutions passed in pursuance of sub-section (3) of section 179 (i.e., resolutions to be passed only at the meetings of Board of directors).</p> <p><b>Effects:</b> Private companies are not required to file with the Registrar the resolutions passed under Section 179(3). (Notification No. G.S.R.464(E) dated 5<sup>th</sup> June, 2015)</p>
<b>Chapter X - Audit and auditors</b>		
9	Section 141(3)(g)	<p>Shall apply with the modification that the words "other than one person companies, dormant companies, small companies and private companies having paid-up share capital less than Rs. 100 crore " shall be inserted after the words "twenty companies".</p> <p><b>Note:</b> Section 141(3) deals with conditions for eligibility for appointment as an auditor of a company. Section 141(3)(g) limits the number of audits by an auditor to twenty companies.</p> <p><b>Effects:</b> One person companies, dormant companies, small companies and private companies having paid-up share capital less of than Rs. 100 crore are excluded from this limit. (Notification No. G.S.R.464(E) dated 5<sup>th</sup> June, 2015)</p>
<b>Chapter XI Appointment and qualifications of directors</b>		
10	Section 160	<p>Shall not apply.</p> <p><b>Note:</b> Section 160 deals with the right of persons other than retiring directors to stand for directorship.</p> <p><b>Effect:</b> Now, for private companies' requirement of Deposit of Rupees One Lakh is not required.(Notification No. G.S.R.464(E) dated 5<sup>th</sup> June, 2015)</p>
11	Section 162	<p>Shall not apply.</p> <p><b>Note:</b> Section 162 deals with the appointment of directors to be voted individually.</p>

		<b>Effect:</b> Now, more than one director can be appointed through a single resolution.(Notification No. G.S.R.464(E) dated 5 <sup>th</sup> June, 2015)
<b>Chapter XII -Meetings of board and its powers</b>		
12	Section 180	Shall not apply. <b>Note:</b> Section 180 deals with restrictions on powers of the Board. <b>Effects:</b> Special Resolution is not required to exercise such powers of the board as provided in Section 180. (Notification No. G.S.R.464(E) dated 5 <sup>th</sup> June, 2015)
13	Section 184(2)	Shall apply with the exception that the interested director may participate in such meeting after disclosure of his interest. <b>Note:</b> Section 184 deals with disclosure of interest by director. Section 184(2) prohibits interested director from participating in meeting. <b>Effects:</b> Interested director of a private company can participate in the meeting after disclosing his interest. (Notification No. G.S.R.464(E) dated 5 <sup>th</sup> June, 2015)
14	Section 185	Shall not apply to a private company – (a) in whose share capital no other body corporate has invested any money; (b) if the borrowings of such a company from banks or financial institutions or any body corporate is less than twice of its paid up share capital or Rs. 50 crore ,whichever is lower; and (c) Such a company has no default in repayment of such borrowings subsisting at the time of making transactions under this Section. <b>Note:</b> Section 185 deals with loans to directors <b>Effects:</b> the provisions of Section 185 shall not apply to a private company if the following conditions are fulfilled. (i) that no other body corporate has invested any money in shares of the company ;

		<p>(b) that the borrowings of such company from banks or financial institutions or any body corporate is less than twice of its paid up share capital or Rs. 50 crore ,whichever is lower; <b>and</b></p> <p>(c) that the company has not made any default in repayment of such borrowings subsisting at the time of making transactions under this Section. (Notification No. G.S.R.464(E) dated 5<sup>th</sup> June, 2015)</p>
15	Second proviso to Section 188(1)	<p>Shall not apply.</p> <p><b>Note:</b> Second proviso to Section 188(1) states that no member of the company shall vote on such resolution, to approve any contract or arrangement which may be entered into by the company, if such member is a related party.</p> <p><b>Effects:</b> in private company, related party to any contract or arrangement can vote on such resolution as a member of the company.</p> <p>(Notification No. G.S.R.464(E) dated 5<sup>th</sup> June, 2015)</p>
<b>Chapter XIII - Appointment and Remuneration of the Managerial Personnel</b>		
16	Section 196(4) and (5)	<p>Shall not apply.</p> <p><b>Note:</b> Section 196(4) deals with appointment of managing director, whole time director or manager Section 196(5) deals with validating actions of managing director/whole time director/manager, if the appointment is not approved by a company in general meeting.</p> <p><b>Effects:</b> Approval of Central Government on variation of terms of appointment from Schedule V is not required for private companies.</p>

[Refer MCA Notification dated 13th June, 2017, which amends the previous exemption notification for private companies dated 5th June, 2015, as on Page No. 41]

**LIST OF EXEMPTIONS AVAILABLE TO SPECIFIED IFSC PRIVATE COMPANY**

Ministry of Corporate Affairs vide its notification no. G.S.R.9(E) dated 4th January, 2017, has given exemptions / relaxations to Specified IFSC Private Companies from the requirements of some of the provisions of the Companies Act, 2013 which are as follows:

Sr. No.	Chapter / Section Number /Sub-section(s) in the Companies Act, 2013	Exceptions/Modifications/Adaptations
(1)	(2)	(3)
1.	Chapter I, Clause (41) of section 2	In clause (41), after the second proviso, the following proviso shall be inserted, namely:-  "Provided also that in case of a Specified IFSC private company, which is a subsidiary of a foreign company, the financial year of the subsidiary may be same as the financial year of its holding company and approval of the Tribunal shall not be required."
2.	Chapter II, Sub-section (2) of section 3	In sub-section (2), the following proviso shall be inserted, namely:-  "Provided that a Specified IFSC private company shall be formed only as a company limited by shares."
3.	Chapter II, Clause (a) of sub-section (1) of section 4	In clause (a) of sub-section (1), after the proviso, the following proviso shall be inserted, namely:-  "Provided further that a Specified IFSC private company shall have the suffix "International Financial Service Company" or "IFSC" as part of its name."
4.	Chapter II, Clause (c) of sub-section (1) of section 4	In clause (c) of sub-section (1) of section 4, the following proviso shall be inserted,namely:-  "Provided that a Specified IFSC private company shall state its objects to do financial services activities, as permitted under the Special Economic Zones Act, 2005 read with the Special Economic Zones Rules, 2006 and any matter considered necessary in furtherance thereof, in accordance with license to operate, from International Financial Services Centre located in an approved multi

		services Special Economic Zone, granted by the Reserve Bank of India or the Securities and Exchange Board of India or the Insurance Regulatory and Development Authority of India.”
5.	Chapter II, Sub-section (1) of section 12	In sub-section (1), the following proviso shall be inserted, namely:-  “Provided that a Specified IFSC private company shall have its registered office at the International Financial Services Centre located in the approved multi services Special Economic Zone set-up under the Special Economic Zones Act, 2005 read with the Special Economic Zones Rules, 2006, where it is licensed to operate, at all times.”
6.	Chapter II, Sub-section (2) of section 12	For the words “thirty days” read as “sixty days”.
7.	Chapter II, Sub-section (4) of section 12	For the words “fifteen days” read as “sixty days”.
8.	Chapter II, Sub-section (5) of section 12	For sub-section (5), the following sub-section shall be substituted, namely:-  “(5) Except on the authority of a resolution passed by the Board of Directors, the registered office of the Specified IFSC private company shall not be changed from one place to another within the International Financial Services Centre:  Provided that a Specified IFSC private company shall not change the place of its registered office to any other place outside the International Financial Services Centre.”
9.	Chapter II, Section 21	For the words “an officer” read as “an officer or any other person”.
10.	Chapter III, Sub-sections (3) and (7) of section 42	Shall not apply.
11.	Chapter III, Sub-section (6) of section 42	For the words “sixty days” read as “ninety days”.
12.	Chapter IV, Clause (c) of sub-section (1) of section 54	Shall not apply.

13.	Chapter IV, Sub-section (4) of section 56	In sub-section (4), after the proviso, the following proviso shall be inserted, namely:-  "Provided further that a Specified IFSC private company shall deliver the certificates of all securities to subscribers after incorporation, allotment, transfer or transmission within a period of sixty days."
14.	Chapter VI, Sub-section (1) of section 82	In sub-section (1), the following proviso shall be inserted, namely:-  "Provided that in case of a Specified IFSC private company, the Registrar may, on an application by the company, allow such registration to be made within a period of three hundred days of such creation on payment of such additional fees as may be prescribed."
15.	Chapter VII, Sub-section (6) of section 89	For the words "thirty days" read as "sixty days".
16.	Chapter VII, Sub-section (3) of section 92	Shall not apply.
17.	Chapter VII, Sub-section (1) of section 100	In sub-section (1), the following proviso shall be inserted, namely:-  "Provided that in case of a Specified IFSC private company, the Board may subject to the consent of all the shareholders, convene its extraordinary general meeting at any place within or outside India."
18.	Chapter VII, Sub-section (1) of section 117	For the words "thirty days" read as "sixty days".
19.	Chapter VII, Sub-section (1) of section 118	In sub-section (1), the following proviso shall be inserted, namely:-  "Provided that in case of a Specified IFSC private company, the minutes of every meeting of its Board of Directors or of every committee of the Board, to be prepared and signed in the manner as may be prescribed under sub section (1) at or before the next Board or committee meeting, as the case may be and kept in books kept for that purpose."

20.	Chapter VII, Sub-section (10) of section 118	Shall not apply.
21.	Chapter IX, Sub-section (3) of section 134	In sub-section (3), the following proviso shall be inserted, namely:-  "Provided that in case of a Specified IFSC private company, if any information listed in this sub-section is provided in the financial statement, the company may not include such information in the report of the Board of Directors."
22.	Chapter IX, Section 135	Shall not apply for a period of five years from the commencement of business of a Specified IFSC private company.
23.	Chapter IX, Section 138	Shall apply if the articles of the company provides for the same.
24.	Chapter X, Fourth proviso to sub-section (1) of section 139	For the words "fifteen days" read as "thirty days".
25.	Chapter X, All provisos to sub-section (2) of section 139	Shall not apply.
26.	Chapter X, Sub-section (1) of section 140	In sub-section (1), after the proviso, the following proviso shall be inserted, namely:-  "Provided further that in case of a Specified IFSC private company, where, within a period of sixty days from the date of submission of the application to the Central Government under this sub-section, no decision is communicated by the Central Government to the company, it would be deemed that the Central Government has approved the application and the company shall appoint new auditor at a general meeting convened within three months from the date of expiry of sixty days period."
27.	Chapter XI, Sub-section (3) of section 149	In sub-section (3), the following proviso shall be inserted, namely:-

		“Provided that this sub-section shall apply to the Specified IFSC private company in respect of financial years other than the first financial year from the date of its incorporation.”
28.	Chapter XI, Sub-section (3) of section 161	In sub-section (3), the following proviso shall be inserted, namely:-  “Provided that in case of a Specified IFSC private company, the Board may appoint, any person nominated by any institution or company or body corporate as a director 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.”
29.	Chapter XI, Proviso to sub-section (1) of section 168	For the word “shall” read as “may” .
30.	Chapter XI, Sub-section (2) of section 170	For the words “thirty days” at both places read as “sixty days”.
31.	Chapter XII, Sub-section (1) of section 173	In sub-section (1), after the proviso, the following proviso shall be inserted, namely:-  “Provided further that a Specified IFSC private company shall hold the first meeting of the Board of Directors within sixty days of its incorporation and thereafter hold at least one meeting of the Board of Directors in each half of a calendar year.”
32.	Chapter XII, Sub-section (3) of section 174	Shall apply with the exception that interested director may participate in such meeting provided the disclosure of his interest is made by the concerned director either prior or at the meeting.
33.	Chapter XII, Sub-section (3) of section 179	In sub-section (3), after the second proviso, the following proviso shall be inserted, namely:-  “Provided also that in case of a Specified IFSC private company, the Board can exercise the powers by means of resolutions passed at the meetings of the Board or through resolutions passed by circulation.”

34.	Chapter XII, Sub-section (1) of section 185	<p>In the Explanation, for clause (c), the following clause shall be substituted, namely:-</p> <p>“(c) any private company of which any such director is a director or member in which director of the lending company do not have direct or indirect shareholding through themselves or through their relatives and a special resolution is passed to this effect.”</p>
35.	Chapter XII, Sub-section (1) of section 186	Shall not apply.
36.	Chapter XII, Sub-sections (2) and (3) of section 186	Shall not apply, if a company passes a resolution either at meeting of the Board of Directors or by circulation.
37.	Chapter XII, Sub-section (5) of section 186	<p>In sub-section (5), after the proviso, the following proviso shall be inserted, namely:-</p> <p>“Provided further that in case of a Specified IFSC private company, the Board can exercise powers under this sub-section by means of resolutions passed at meetings of the Board of Directors or through resolutions passed by circulation.”</p>
38	Chapter XXII, Sub-section (2) of section 384	<p>In sub-section (2), the following proviso shall be inserted, namely:-</p> <p>“Provided that notwithstanding anything contained in this Act, the exemptions provided under section 92 to companies incorporated under this Act for the purpose of operating from the International Financial Services Centre located in an approved multi services Special Economic Zone set-up under the Special Economic Zones Act, 2005 (28 of 2005) and the Special Economic Zones Rules, 2006, shall apply mutatis mutandis to a foreign company registered under Chapter XXII of this Act, which has a place of business or which conducts business activity from the International Financial Services Centre located in an approved multi services Special Economic Zone set-up under the Special Economic Zones Act, 2005 and the Special Economic Zones Rules, 2006.”</p>

39.	Chapter XXII, Sub-section (4) of section 384	<p>In sub-section (4), the following proviso shall be inserted, namely:-</p> <p>“Provided that notwithstanding anything contained in this Act, the exemptions provided under Chapter VI to companies incorporated under this Act for the purpose of operating from the International Financial Services Centre located in an approved multi services Special Economic Zone set-up under the Special Economic Zones Act, 2005 (28 of 2005) and the Special Economic Zones Rules, 2006, shall apply mutatis mutandis to a foreign company registered under Chapter XXII of this Act, which has a place of business or which conducts business activity from the International Financial Services Centre located in an approved multi services Special Economic Zone set-up under the Special Economic Zones Act, 2005 and the Special Economic Zones Rules, 2006.”</p>
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#### **ADDITIONAL EXEMPTIONS AVAILABLE TO PRIVATE COMPANIES**

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Ministry of Corporate Affairs vide its notification dated 13th June, 2017 hereby amends the notification of the Government of India, in the Ministry of Corporate Affairs, vide number G.S.R. 464(E) dated the 5<sup>th</sup> June, 2015 published in the Gazette of India, Extraordinary, Part-II, Section 3, Sub-section (i), dated the 5th June 2015 (hereinafter referred to as the principal notification), namely:-

A copy of this notification has been laid in draft before both Houses of Parliament as required by sub-section (2) of section 462 of the said Act.

Such notification is as under:

In the principal notification, in the Table, the existing serial number 1 and the entries relating thereto shall be re-numbered as serial number 1-A, and before the serial number 1A as so re-numbered and the entries relating thereto, the following serial number and the entries relating thereto shall be inserted, namely –

S. No.	Revised Serial Number	Chapter/Section number/Sub-section(s) in the Companies Act, 2013	Exceptions/Modifications/Adaptations
1.	"1.	Chapter I, clause (40) of section 2	<p>For the proviso, the following shall be substituted, namely:-</p> <p>Provided that the financial statement, with respect to one person company, small company, dormant company and private company (if such private company is a start-up) may not include the cash flow statement;</p> <p><i>Explanation.</i> - For the purposes of this Act, the term 'start-up' or "start-up company" means a private company incorporated under the Companies Act, 2013 (18 of 2013) or the Companies Act, 1956 (1 of 1956) and recognised as start-up in accordance with the notification issued by the Department of Industrial Policy and Promotion, Ministry of Commerce and Industry."</p>

In the principal notification, in the table, after serial number 6 and the entries relating thereto, the following serial numbers and the entries relating their to shall be substituted, namely:-

2.	"6.	Chapter V, clauses (a) to (e) of sub-section (2) of section 73.	<p>Shall not apply to a private company -</p> <p>(A) which accepts from its members monies not exceeding one hundred per cent. of aggregate of the paid up share capital, free reserves and securities premium account;</p> <p>or</p> <p>(B) which is a start-up, for five years from the date of its incorporation; or</p> <p>(C) which fulfils all of the following conditions, namely:-</p> <p>(a) which is not an associate or a subsidiary company of any other company;</p>
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			<p>(b) if the borrowings of such a company from banks or financial institutions or any body corporate is less than twice of its paid up share capital or fifty crore rupees, whichever is lower; and</p> <p>(c) such a company has not defaulted in the repayment of such borrowings subsisting at the time of accepting deposits under this section:</p> <p>Provided that the company referred to in clauses (A), (B) or (C) shall file the details of monies accepted to the Registrar in such manner as may be specified.”</p>
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In the principal notification, in the table, after serial number 6 and the entries relating thereto, the following serial numbers and the entries shall be inserted, namely:-

3.	“6A.	Chapter VII, clause (g) of sub-section (1) of section 92	Shall apply to private companies which are small companies, namely:- “(g) aggregate amount of remuneration drawn by directors;”
4.	6B	Chapter VII, proviso to sub-section (1) of section 92	For the proviso, the following proviso shall be substituted, namely:- Provided that in relation to One Person Company, small company and private company (if such private company is a start-up), the annual return shall be signed by the company secretary, or where there is no company secretary, by the director of the company.”

In the principal notification, after serial number 9, the following serial number and the entries relating thereto shall be inserted, namely:-

5.	“9A	Chapter X, clause (i) of sub-section (3) of section 143.	Shall not apply to a private company:- (i) which is a one person company or a small company; or  (ii) which has turnover less than rupees fifty crores as per latest audited financial
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			statement or which has aggregate borrowings from banks or financial institutions or any body corporate at any point of time during the financial year less than rupees twenty five crore.”
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In the principal notification, after serial number 11, the following serial numbers and the entries relating thereto shall be inserted, namely:-

6.	11A	Chapter XII, sub-section (5) of section 173.	For sub-section (5), the following sub-section shall be substituted, namely:- (5) A One Person Company, small company, dormant company and a private company (if such private company is a start-up) shall be deemed to have complied with the provisions of this section if at least one meeting of the Board of Directors has been conducted in each half of a calendar year and the gap between the two meetings is not less than ninety days:  Provided that nothing contained in this sub-section and in section 174 shall apply to One person Company in which there is only one director on its Board of Directors.
7.	11B	Chapter XII, sub-section (3) of section 174	Shall apply with the exception that the interested director may also be counted towards quorum in such meeting after disclosure of his interest pursuant to section 184.”

In the principal notification, after paragraph 2, the following paragraph shall, be inserted, namely:-

“2A. The exceptions, modifications and adaptations provided in column (3) of the aforesaid Table shall be applicable to a private company which has not committed a default in filing its financial statements under section 137 of the said Act or annual return under section 92 of the said Act with the Registrar.”

CHAPTER II

**INCORPORATION OF COMPANY AND  
MATTERS INCIDENTAL THERETO**

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**FORMATION OF PRIVATE COMPANY**

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**Relevant Sections and Rules**

Section 3 to 22 of the Companies Act, 2013, read with Companies (Incorporation) Rules, 2014.

**Minimum requirements to incorporate a private company**

Details	Limit	
	Minimum	Maximum
Number of Subscribers to Memorandum	2	
Number of Members	2	200
Number of Directors	2	15
Minimum Capital Requirement	Nil. Relief to private companies has been brought through the Companies (Amendment) Act, 2015 whereby the requirement of minimum paid- up share capital of Rupees one lakh for private companies has been dispensed with.	

**Steps involved in incorporation of Private company**

- Application for Availability of Name of company in **Form No. INC.1**;
- The application for name availability may also be filed through **Form INC-32 (SPiCe)** i.e. Single Application for Incorporation of Company.

E-Form SPICe (INC-32) deals with the single application for allotment of Director Identification Number upto three Directors, reservation of a name, application for PAN and TAN, incorporation of company and appointment of Directors, address of the registered office . In this form only one name can be proposed.

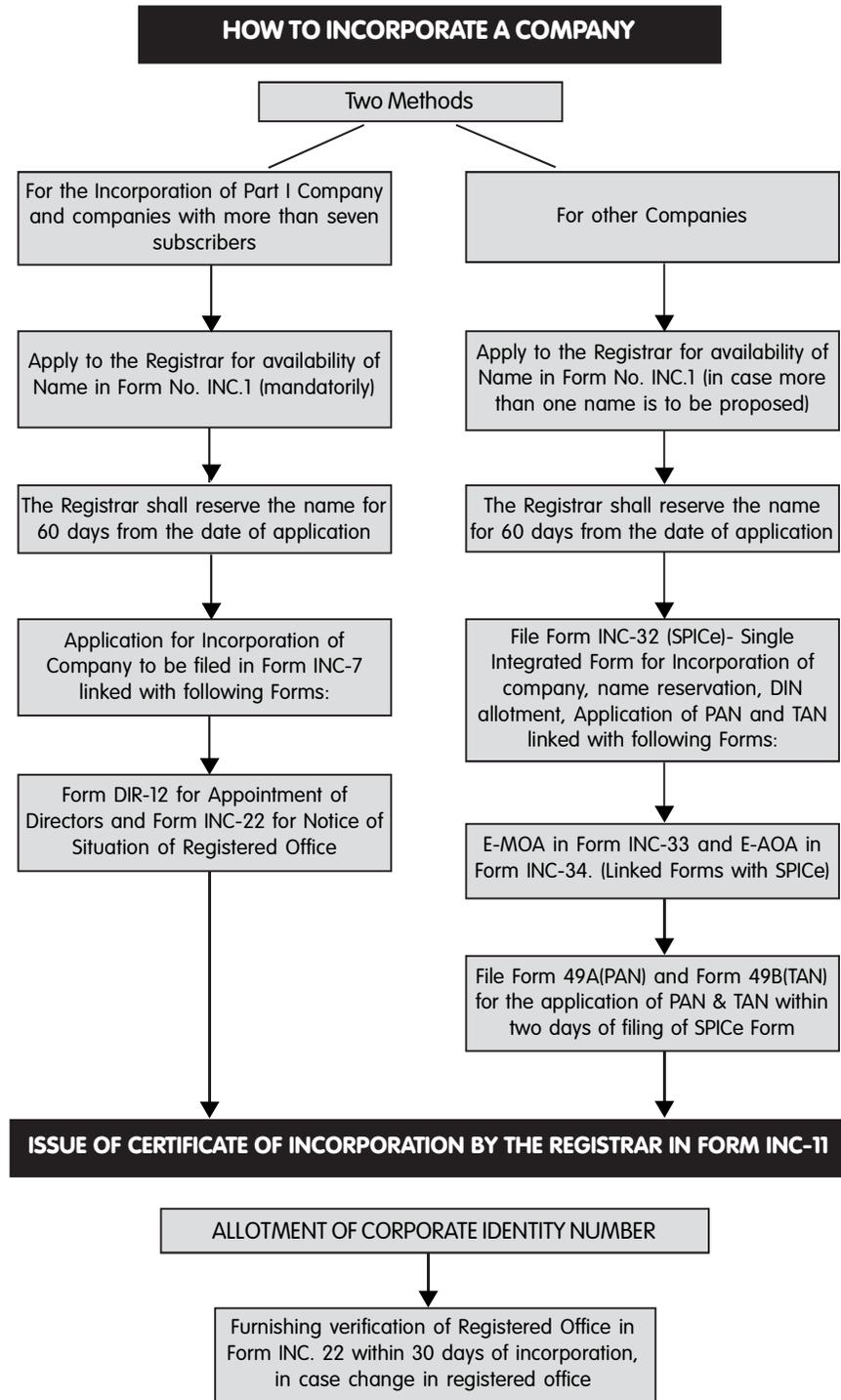
- Rule 8 of Companies (Incorporation) Rules, 2014 lists out undesirable names which the applicant should bear in mind.
- To prepare Memorandum and Articles of Association. Name of the company with the last words "Private Limited" in the case of a private limited company.
- The memorandum of a company shall be in respective forms specified in Tables A, B, C, D and E in Schedule I as may be applicable to such company. [Section 4(6)]
- Articles of Private Company should –
  - (i) restrict the right to transfer its shares;
  - (ii) except in case of One Person Company, limits the number of its members to two hundred;
  - (iii) prohibit any invitation to the public to subscribe for any securities of the company;
- In case of incorporating a private company with more than seven subscribers:
- After availability of name, an application for incorporation shall be filed with ROC in **Form INC-7** with the following:
  - o Declaration from the professional in **Form No. INC. 8** that all the requirements of this Act and the rules made thereunder in respect of registration and matters precedent or incidental thereto have been complied with.
  - o Filing of an affidavit in **Form No. INC. 9** from each of the subscribers to the memorandum and from persons named as the first directors, if any, in the articles that he is not convicted of any offence in connection with the promotion, formation or management of any company, or that he has 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 during the preceding five years and that all the documents filed with the Registrar for registration of the company contain information that is correct and complete and true

to the best of his knowledge and belief. (Rule 15 of Companies (Incorporation) Rules, 2014)

- o Rule 16 of Companies (Incorporation) Rules, 2014, provides for the particulars of every subscriber to be filed with the Registrar at the time of incorporation. This is filed as an attachment.
  - o The details of the first directors as mentioned in the Articles are to be filed in DIR-12 and the particulars of their interests, in other firms or body corporates along with their consent to act as directors of the company shall be filed in Form DIR 2, which is an attachment to DIR 12.
- Issue of Certificate of Incorporation by Registrar in **Form INC-11** of the Companies (Incorporation) Rules, 2014 and the Certificate of Incorporation shall mention permanent account number of the company where if it is issued by the Income-tax Department. In case of incorporating a private company with less than seven subscribers:
    - **Form INC-32 (SPICe)**
    - Declaration from the professional in **Form No. INC. 8** that all the requirements of this Act and the rules made thereunder in respect of registration and matters precedent or incidental thereto have been complied with.
    - filing of an affidavit in **Form No. INC. 9** from each of the subscribers to the memorandum and from persons named as the first directors, if any, in the articles that he is not convicted of any offence in connection with the promotion, formation or management of any company, or that he has 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 during the preceding five years and that all the documents filed with the Registrar for registration of the company contain information that is correct and complete and true to the best of his knowledge and belief. (Rule 15)
    - Rule 16 of Companies (Incorporation) Rules, 2014 provides for the particulars of every subscriber to be filed with the Registrar at the time of incorporation. This is filed as an attachment.
    - Consent to act as directors in DIR 2.
  - **Important points to be considered for incorporation of Specified IFSC private company**

**MCA vide its Notification No. G.S.R. 9 (E) dated 4th January, 2017**, has given a number of exemptions to Specified IFSC private company. It also requires such IFSC private company to-

- have the suffix "International Financial Service Company" or "IFSC" as part of its name.
- state its objects to do financial services activities, as permitted under the Special Economic Zones Act, 2005, read with the Special Economic Zones Rules, 2006 and any matter considered necessary in furtherance thereof, in accordance with license to operate, from International Financial Services Centre located in an approved multi services Special Economic Zone, granted by the Reserve Bank of India or the Securities and Exchange Board of India or the Insurance Regulatory and Development Authority of India.
- have its registered office at the International Financial Services Centre located in the approved multi services Special Economic Zone set-up under the Special Economic Zones Act, 2005, read with the Special Economic Zones Rules, 2006, where it is licensed to operate, at all times.



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**PUBLICATION OF NAME BY COMPANY**

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**Relevant Section:** Section 12(3)

**Relevant Rule:** Rule 26 of the Companies (Incorporation) Rules, 2014.

- name and the address of registered office of companies are required to be painted or affixed on the outside of every office or place in which its business is carried on, in a conspicuous position, in legible letters in the languages in general use in that locality;
- name should be engraved in legible characters on its seal, if any;
- name, address of its registered office and the Corporate Identity Number along with telephone number, fax number, if any, e-mail and website addresses, if any, should be printed in all the business letters, billheads, letter papers and in all its notices and other official publications; and
- name should be printed on hundies, promissory notes and bills of exchange:
  - Every company which has a website for conducting online business or otherwise shall disclose its name, address of its registered office, the Corporate Identity Number, Telephone number, fax number if any, email and the name of the person who may be contacted in case of any queries or grievances on the landing/home page of the website.
  - where a company has changed its name or names during the last two years, it shall paint or affix or print, as the case may be, along with its name, the former name or names so changed during the last two years;
  - In case of One Person Company, the words “One Person Company” shall be mentioned in brackets below the name of such company, wherever its name is printed, affixed or engraved.

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**ALTERATION OF MEMORANDUM OF PRIVATE COMPANY**

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**Relevant Section:** Section 13

**Relevant Rules:** 28, 29, 30, 31, 32 of the Companies (Incorporation) Rules, 2014.

Memorandum of Association of any company is one of the most important documents and must be drafted with care. It has to be filed with the Registrar of Companies during the process of incorporation of a Company. It contains the fundamental conditions upon which the company is allowed to operate. Its

purpose is to enable shareholders, creditors, and those who deal with the company to know what is its permitted range of activities. It informs all persons what the company is formed to do and what capital it has to do with. The main contents of Memorandum of Association are:

- Name of the Company. In case of a Private Company, the last words should be “Private Limited”;
- The state in which the registered office of the company is to be situated;
- The main objects for which the company is to be incorporated and any matter considered necessary in furtherance thereof;

Companies (Amendment) Bill, 2016, provides that the company may engage in any lawful act or activity or business, or any act or activity or business to pursue any specific object or objects, as per the law for the time being in force. In case a company proposes to pursue any specific object or objects or restrict its objects, the Memorandum shall state the said object or objects for which the company is incorporated and any matter considered necessary in furtherance thereof and in such case the company shall not pursue any act or activity or business, other than specific objects stated in the Memorandum;

- The liability of members;
- Share capital and number of shares each subscriber to the memorandum of association agrees to subscribe.
- In case of one person company, the name of person who, in the event of death of the subscriber shall become the member of the company.

The above stated clauses of the Memorandum of Association may be amended by following the procedure provided under Chapter II of the Companies Act, 2013.

#### ➤ **ALTERATION OF MEMORANDUM BY CHANGE OF NAME**

Change of name may be effected in two situations:

- A. without change of class of company
- B. change in class of company

#### **A. ALTERATION OF NAME OF COMPANY WITHOUT CHANGE OF CLASS OF COMPANY**

The change of name shall not be allowed to a company which has not filed annual returns or financial statements due for filing with the Registrar or which has failed to pay or repay matured deposits or debentures or interest thereon:

Provided that the change of name shall be allowed upon filing necessary documents or payment or repayment of matured deposits or debentures or interest thereon as the case may be.

**Relevant Section:** Section 13

**Relevant Rule:** 29

- To pass board resolution for change of name.
- An application for the reservation of a name shall be made in **Form No. INC.1** which may be approved or rejected, as the case may be, by the Registrar, Central Registration Centre.
- To pass special resolution for change of name.
- File special resolution in **E-form MGT-14** to Registrar within 30 days.
- Approval for change of name from Central Government in writing is required to be obtained. [MCA vide its notification dated the 21st May, 2014 the Central Government has delegated this power to the Registrar of Companies].
- An application shall be filed in **Form No. INC.24** to Registrar along with the fee for change in the name of the company.
- a new certificate of incorporation in **Form No. INC.25** shall be issued to the company consequent upon change of name.
- the Registrar shall enter the new name in the register of companies in place of the old name and issue a fresh certificate of incorporation with the new name and the change in the name shall be complete and effective only on the issue of such a certificate.

## **B. CHANGE OF NAME CONSEQUENT TO CHANGE IN CLASS**

❖ **Private Company to Public company or vice-versa by addition or deletion of the word 'Private'**

**Relevant Section:** Section 14 and section 18

**Relevant Rules:** Rule 33 of the Companies (Incorporation) Rules, 2014

**Steps Involved (Conversion of Private Company to Public Company by deletion of the word 'Private'):**

- To pass special Resolution;
- To file **E-Form MGT-14** within 30 days to Registrar;

- To file application in **E-Form INC-27** to Registrar within 30 days from the date of Special Resolution;
- Registrar shall give fresh certificate of incorporation in **Form INC-11**.

**Steps Involved (Conversion of Public Company to Private Company by addition of the word ‘Private’):**

- To pass special Resolution;
- To file **E-Form MGT-14** within 30 days to Registrar;
- To get approval from the National Company Law Tribunal;
- To file application in **E-Form INC-27** to Registrar within 30 days from the date of Special Resolution. Copy of order of the Tribunal approving the alteration, shall be filled with the Registrar in **Form No. INC-27** with fee together with the printed copy of altered articles within fifteen days from the date of receipt of the order from the Tribunal;
- Registrar shall give fresh certificate of incorporation in INC-11.

❖ **Conversion of OPC to Private Company or a Public company**

**Relevant Rule:** Rule 6 of the Companies (Incorporation) Rules, 2014

- **Voluntary Conversion:** A One Person company can get itself converted into a Private or Public company after increasing the minimum number of members and directors to two (in case of conversion to a Private Company) or minimum of seven members and three directors (in case of conversion to a public company) and by making due compliance of section 18 of the Act for conversion.
- **Mandatory Conversion:** Where the paid up share capital of an OPC exceeds Rs. 50 lakh and its average annual turnover during the relevant period exceeds Rs. 2 crore, it shall cease to be entitled to continue as a One Person Company.
- Within period of sixty days from the date of applicability of point above, OPC to give a notice to the Registrar in **Form No. INC.5** informing that it has ceased to be a One Person Company and that it is now required to convert itself into a private company or a public company.
- Such OPC has to mandatorily convert itself into either a private company with minimum of two members and two directors or a public company with at least of seven members and three directors in accordance with the provisions of section 18 of the Act.

- Such conversion should be done within six months of the date on which its paid up share capital is increased beyond Rs. 50 lakh or the last day of the relevant period during which its average annual turnover exceeds Rs. 2 crore as the case may be.
- “relevant period” means the period of immediately preceding three consecutive financial years;
- OPC to alter its memorandum and articles by passing a resolution in accordance with sub-section (3) of section 122 of the Act to give effect to the conversion and to make necessary changes incidental thereto.

#### ❖ **Conversion of Private company into One Person Company (OPC)**

A private company other than a section 8 company having paid up share capital of Rs. 50 rupees or less and average annual turnover of Rs. 2 crore or less may convert itself into one person company.

#### **Applicable Rule: Rule 7**

#### **Steps Involved**

- Company to obtain No Objection in writing from members and creditors.
- To pass a special resolution in the general meeting.
- Company to file copy of the special resolution with the Registrar within thirty days from the date of passing such resolution in **Form No. MGT. 14**.
- Company to file an application in **Form No. INC. 6** for its conversion into **One Person Company** along with fees by attaching the following documents, namely:-
  - (i) The directors of the company shall give a declaration by way of affidavit duly sworn in confirming that all members and creditors of the company have given their consent for conversion, the paid up share capital company is Rs. 50 lakhs or less or average annual turnover is less than Rs. 2 crores, as the case may be;
  - (ii) the list of members and list of creditors;
  - (iii) the latest Audited Balance Sheet and the Profit and Loss Account; and
  - (iv) the copy of No Objection letter from secured creditors.
- On being satisfied and after having complied with the requirements stated herein the Registrar shall issue the Certificate.

➤ **ALTERATION OF MEMORANDUM BY SHIFTING OF REGISTERED OFFICE****Relevant Section:** Section 13**Relevant Rule:** 28 & 30 of the Companies (Incorporation) Rules, 2014

Registered office of a company may be shifted from:

- i. within the 'local limits' of any city, town or village where the registered office is situated;
- ii. outside the 'local limits' of any city, town or village where the registered office is situated;
- iii. Jurisdiction of one Registrar to another within the same state;
- iv. One state to another or one union territory to another

The Memorandum will be altered only when there is shifting of Registered Office from one State to another (or one U.T. to another).

❖ **Change of situation of the registered office within the 'local limits' of any city, town or village where the registered office is situated**

- Directors of the Company to pass Board resolution;
- To file **E-Form INC-22** within 15 days from the date of resolution

❖ **Change of situation of the registered office outside the 'local limits' of any city, town or village where the registered office is situated**

- Company to pass members' special resolution in general meeting.
- To file **E-Form MGT-14** within 30 days of passing special resolution.
- To file **E-Form INC-22** within 15 days from the date of passing special resolution.

❖ **Change of situation of the registered office from jurisdiction of one Registrar to another within the same state. [Rule 28]**

- 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 against the company under the Act.
- To pass special resolution.
- To file **E-Form MGT-14** within 30 days of passing special resolution.
- Not less than one month before filing any application with the Regional Director for the change of registered office, the company is required to –

- o publish a notice, at least once in a daily newspaper published in English and in the principal language of that district in which the registered office of the company is situated and circulating in that district; and
  - o serve individual notice on each debenture holder, depositor and creditor of the company, clearly indicating the matter of application and stating that any person whose interest is likely to be affected by the proposed alteration of the memorandum may intimate his nature of interest and grounds of opposition to the Regional Director with a copy to the company within twenty one days of the date of publication of that notice.
- File application seeking confirmation from the Regional Director for shifting the registered office within the same State from the jurisdiction of one Registrar of Companies to the jurisdiction of another Registrar of Companies, in **Form no. INC.23** along with the fee.
  - The Company shall file the confirmation with the Registrar within a period of sixty days of the date of confirmation, in **Form no. INC-28** along with the fee, who shall register the same and certify the registration within a period of thirty days from the date of filing of such certificate.
  - in case no objection is received by the Regional Director within twenty one 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.
  - The notice of change of the situation of the registered office and verification thereof shall be filed in **Form No. INC.22** along with the fee and shall be attached to the said form, the similar documents and manner of verification as are specified for verification of Registered office on incorporation. [Rule 27 of the Companies (Incorporation) Rules, 2014].

❖ **Shifting of Registered Office from one State or Union Territory to another State [Rule 30]**

- 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 against the company under the Act.
- On completion of such inquiry, inspection or investigation as a consequence of which no prosecution is envisaged or no prosecution is pending, shifting of registered office shall be allowed;

- To pass special Resolution;
- To file **E-Form MGT-14** within 30 days of passing special resolution;
- At least 14 days before the date of hearing –
  - advertise the application in the **Form No. INC. 26** in a vernacular newspaper in the principal vernacular language in the district in which the registered office of the company, and at least once in English language in an English newspaper circulating in that district;
  - serve, by registered post, individual notice(s), on each debenture-holder and creditor of the company; and
  - serve, by registered post, a notice together with the copy of the application to the Registrar and to the regulatory body, if the company is regulated under any special Act or law for the time being in force.
- Application to be filed with the Central Government in **Form No. INC.23** along with the fee and shall be accompanied by the following documents, namely:-
  - (a) a copy of the memorandum and articles of association;
  - (b) a copy of the notice convening the general meeting along with relevant Explanatory Statement;
  - (c) a copy of the special resolution sanctioning the alteration by the members of the company;
  - (d) a copy of the minutes of the general meeting at which the resolution authorizing such alteration was passed, giving details of the number of votes cast in favor or against the resolution;
  - (e) an affidavit verifying the application;
  - (f) the list of creditors and debenture holders entitled to object to the application (drawn up to the latest practicable date preceding the date of filing of application by not more than one month);
  - (g) an affidavit verifying the list of creditors;
  - (h) the document relating to payment of application fee;
  - (i) a copy of board resolution or Power of Attorney or the executed Vakalatnama, as the case may be;
  - (j) a copy of the No Objection Certificate from the Reserve Bank of India where the applicant is a registered Non-Banking Financial Company;

- (k) a copy of the acknowledgment of service of a copy of the application with complete annexures to the Registrar and Chief Secretary of the State Government or Union territory where the registered office is situated at the time of filing the application.
- There shall be attached to the application an affidavit from the directors of the company that no employee shall be retrenched as a consequence of shifting of the registered office from one state to another state and also there shall be an application filed by the company to the Chief Secretary of the concerned State Government or the Union territory.
- Any person may, at any time during the ordinary hours of business, inspect and take extracts from the same on payment of a sum not exceeding ten rupees per page duly authenticated copy of the list of creditors which shall be kept at the registered office.
- On receipt of any objection of any person whose interest is likely to be affected by the proposed application, the company to serve a copy to the Central Government on or before the date of hearing.
- Where no objection has been received from any of the parties, the application may be put up for orders without hearing.
- Before confirming the alteration, the Central Government to ensure that, with respect to every creditor and debenture holder who, in the opinion of the Central government, is entitled to object to the alteration, and who signifies his objection in the manner directed by the Central government, either his consent to the alteration has been obtained or his debt or claim has been discharged or has determined, or has been secured to the satisfaction of the Central Government.
- 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 in **Form No. INC. 28** along with the fee as with the Registrar of the State within thirty days from the date of receipt of certified copy of the order.

➤ **ALTERATION OF MEMORANDUM BY CHANGE OF OBJECTS FOR WHICH MONEY IS RAISED THROUGH PROSPECTUS**

- The companies which has raised money and want to alter the objects for which money is raised through prospectus are required to comply with the provisions of section 13(8).
- In case of Private Company which has not raised any money from public may alter its object clause only by passing a special resolution;

- The Registrar shall register any alteration of the memorandum with respect to the objects of the company and certify the registration within a period of thirty days from the date of filing of the special resolution.
- No alteration made under this section shall have any effect until it has been registered in accordance with the provisions of this section.

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#### **REGISTRATION OF ALTERATION OF MEMORANDUM**

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In relation to any alteration of its memorandum, company shall file with the Registrar-

- The special resolution passed by the company;
- The approval of Central Government, in case of change in name and
- The approval of Central Government, in case of shifting of registered office from one state to another (file with both Registrars in this case)

The Registrar shall register the alteration in case of change in object and certify the registration within 30 days. In case of Change of name and shifting of registered office from one state to another, fresh certificate of incorporation shall be issued.

No alteration of memorandum shall take effect until it has been registered in accordance with section 13.

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#### **ALTERATION OF ARTICLES OF ASSOCIATION OF PRIVATE COMPANY**

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**Relevant Sections:** 14, 15

**Relevant Rule:** Rule 33 of the Companies (Incorporation) Rules, 2014 and Rule 68 of the National Company Law Tribunal Rules, 2016.

- The articles of a company shall contain the regulations for management of the company.
- The model articles as prescribed in Table F,G,H,I and J of Schedule I may be adopted by a company as may be applicable to the case of the company, either in totality or otherwise.
- Articles may contain provisions for entrenchment to the effect that specified provisions may be altered only if conditions or procedures as that are more restrictive than those applicable in case of a special resolution are met or complied with.
- Provisions for entrenchment shall only be made:
  - o either on formation of a company or

- o by an amendment in the articles agreed to be all the members of the company (in case of a private company).
- Where the articles contain provisions for entrenchment, the company to give notice to Registrar of such provisions in **Form INC 2**. In case of existing company, the same shall be filed in **Form MGT-14** within 30 days from the date of entrenchment of Articles.
- Private Company may alter its articles by passing special resolution.
- **Form MGT-14** to be filed within 30 days of passing the resolution.
- Every alteration made in the memorandum or articles of a company shall be noted in every copy of the memorandum or articles, as the case may be.

## PROSPECTUS AND ALLOTMENT OF SECURITIES

A private company may issue securities –

- by way of rights issue or bonus issue in accordance with the provisions of this Act; or,
- through private placement by complying with the provisions of Part II of Chapter III of Companies Act, 2013 (Section 23 of the Companies Act, 2013).

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### **PRIVATE PLACEMENT BY PRIVATE COMPANIES [section 42 read with Rule 14 of the Companies (Prospectus and Allotment of Securities) Rules, 2014]**

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- “Private Placement” means any offer of securities or invitation to subscribe securities to a select group of persons by a company (other than by way of public offer) through issue of a private placement offer letter and which satisfies the conditions specified.
- No fresh offer or invitation under this section shall be made unless the allotments with respect to any offer or invitation made earlier have been completed *or that offer or invitation has been withdrawn or abandoned by the company.*
- The company to pass a Special Resolution to get prior approval of the proposed offer of securities or invitation to subscribe securities for each of the Offers or Invitations.
- To file **Form MGT-14** within 30 days of passing special resolution.
- In the explanatory statement annexed to the notice for the general meeting the basis or justification for the price (including premium, if any) at which the offer or invitation is being made shall be disclosed.
- In case of offer or invitation for non-convertible debentures, it shall be sufficient if the company passes a previous special resolution only once in a year for all the offers or invitation for such debentures during the year.
- A company may, subject to the provisions of this section, make private placement through issue of a private placement offer letter in **Form PAS-4**.

- A private placement offer letter shall be accompanied by an application form serially numbered and addressed specifically to the person to whom the offer is made and shall be sent to him, either in writing or in electronic mode, within thirty days of recording the names of such persons in accordance with Section 42(7) of the Companies Act, 2013.
- No person other than the person so addressed in the application form shall be allowed to apply through such application form and any application not conforming to this condition shall be treated as invalid.
- Such offer or invitation shall be made to such number of persons not exceeding 200 persons in the aggregate in a financial year. This number shall exclude qualified institutional buyers, and employees of the company being offered securities under a scheme of employees stock option;
- The value of such offer or invitation per person shall be with an investment size of not less than Rs. 20,000 of face value of the securities.
- All offers covered under this section shall be made only to such persons whose names are recorded by the company prior to the invitation to subscribe, and that such persons shall receive the offer by name and that a complete record of such offers shall be kept by the company in such manner as may be prescribed and complete information about such offer shall be filed with the Registrar within a period of 30 days of circulation of relevant private placement offer letter. All monies payable towards subscription of securities under this section shall be paid through cheque or demand draft or other banking channels but not by cash.
- No company offering securities under this section shall release any public advertisements or utilise any media, marketing or distribution channels or agents to inform the public at large about such an offer
- Monies received on application under this section shall be kept in a separate bank account in a scheduled bank and shall not be utilised for any purpose other than –
  - (a) for adjustment against allotment of securities; or
  - (b) for the repayment of monies where the company is unable to allot securities.
- The payment to be made for subscription to securities shall be made from the bank account of the person subscribing to such securities and the company shall keep the record of the Bank account from where such payments for subscriptions have been received.

- A company making an offer or invitation under this section shall allot its securities within 60 days from the date of receipt of the application money for such securities and if the company is not able to allot the securities within that period, it shall repay the application money to the subscribers within fifteen days from the date of completion of 60 days and if the company fails to repay the application money within the aforesaid period, it shall be liable to repay that money with interest at the rate of 12% per annum from the expiry of the sixtieth day.
- The company shall maintain a complete record of private placement offers in **Form PAS-5**.
- A copy of such record along with the private placement offer letter in **Form PAS-4** shall be filed with the Registrar in **Form GNL-2** with fee as provided in Companies (Registration Offices and Fees) Rules, 2014.
- A return of allotment of securities under section 42 shall be filed with the Registrar within 30 days of allotment in **Form PAS-3** and with the fee as provided in the Companies (Registration Offices and Fees) Rules, 2014 along with a complete list of all security holders containing–
  - (i) the full name, address, Permanent Account Number and E-mail ID of such security holder;
  - (ii) the class of security held;
  - (iii) the date of allotment of security ;
  - (iv) the number of securities held, nominal value and amount paid on such securities; and particulars of consideration received if the securities were issued for consideration other than cash.

#### **EXEMPTION**

- The provisions of clauses (b) and (c) of sub-rule (2) of Rule 14 shall not be applicable to -
  - (a) non-banking financial companies which are registered with the Reserve Bank of India under Reserve Bank of India Act, 1934; and
  - (b) housing finance companies which are registered with the National Housing Bank under National Housing Bank Act, 1987,

if they are complying with regulations made by Reserve Bank of India or National Housing Bank in respect of offer or invitation to be issued on private placement basis:

Provided that such companies shall comply with sub-clauses (b) and (c) of sub-rule (2) in case the Reserve Bank of India or the National Housing Bank have not specified similar regulations.

- In case of Specified IFSC Private Company - Sub-sections (3) and (7) of section 42 shall not apply. - Notification Dated 4th January, 2017.
- In case of Specified IFSC Private Company - Sub-section (6) of section 42, for the words "sixty days" read as "ninety days". - Notification No. G.S.R. 9(E) Dated 4th January, 2017.

### **Amendment proposed in Companies (Amendment) Bill, 2016**

Companies (Amendment) Bill, 2016 proposes to substitute section 42 as under:

'42. (1) A company may, subject to the provisions of this section, make a private placement of securities.

(2) A private placement shall be made only to a select group of persons who have been identified by the Board (herein referred to as "identified persons"), whose number shall not exceed fifty or such higher number as may be prescribed [excluding the qualified institutional buyers and employees of the company being offered securities under a scheme of employees stock option in terms of provisions of clause (b) of subsection (1) of section 62], in a financial year subject to such conditions as may be prescribed.

(3) A company making private placement shall issue private placement offer and application in such form and manner as may be prescribed to identified persons, whose names and addresses are recorded by the company in such manner as may be prescribed:

Provided that the private placement offer and application shall not carry any right of renunciation.

*Explanation I.* – "private placement" means any offer or invitation to subscribe or issue of securities to a select group of persons by a company (other than by way of public offer) through private placement offer-cum-application, which satisfies the conditions specified in this section.

*Explanation II.* – "qualified institutional buyer" means the qualified institutional buyer as defined in the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2009, as amended from time to time, made under the Securities and Exchange Board of India Act, 1992.

*Explanation III.* – If a company, listed or unlisted, makes an offer to allot or invites subscription, or allots, or enters into an agreement to allot, securities to more than the prescribed number of persons, whether the payment for the

securities has been received or not or whether the company intends to list its securities or not on any recognised stock exchange in or outside India, the same shall be deemed to be an offer to the public and shall accordingly be governed by the provisions of Part I of this Chapter.

(4) Every identified person willing to subscribe to the private placement issue shall apply in the private placement and application issued to such person alongwith subscription money paid either by cheque or demand draft or other banking channel and not by cash:

Provided that a company shall not utilise monies raised through private placement unless allotment is made and the return of allotment is filed with the Registrar in accordance with sub-section (8).

(5) No fresh offer or invitation under this section shall be made unless the allotments with respect to any offer or invitation made earlier have been completed or that offer or invitation has been withdrawn or abandoned by the company:

Provided that, subject to the maximum number of identified persons under subsection (2), a company may, at any time, make more than one issue of securities to such class of identified persons as may be prescribed.

(6) A company making an offer or invitation under this section shall allot its securities within sixty days from the date of receipt of the application money for such securities and if the company is not able to allot the securities within that period, it shall repay the application money to the subscribers within fifteen days from the expiry of sixty days and if the company fails to repay the application money within the aforesaid period, it shall be liable to repay that money with interest at the rate of twelve per cent. per annum from the expiry of the sixtieth day:

Provided that monies received on application under this section shall be kept in a separate bank account in a scheduled bank and shall not be utilised for any purpose other than –

- (a) for adjustment against allotment of securities; or
- (b) for the repayment of monies where the company is unable to allot securities.

(7) No company issuing securities under this section shall release any public advertisements or utilise any media, marketing or distribution channels or agents to inform the public at large about such an issue.

(8) A company making any allotment of securities under this section, shall file

with the Registrar a return of allotment within fifteen days from the date of the allotment in such manner as may be prescribed, including a complete list of all allottees, with their full names, addresses, number of securities allotted and such other relevant information as may be prescribed.

(9) If a company defaults in filing the return of allotment within the period prescribed under sub-section (8), the company, its promoters and directors shall be liable to a penalty for each default of one thousand rupees for each day during which such default continues but not exceeding twenty-five lakh rupees.

(10) Subject to sub-section (11), if a company makes an offer or accepts monies in contravention of this section, the company, its promoters and directors shall be liable for a penalty which may extend to the amount raised through the private placement or two crore rupees, whichever is lower, and the company shall also refund all monies with interest as specified in sub-section (6) to subscribers within a period of thirty days of the order imposing the penalty.

(11) Notwithstanding anything contained in sub-section (9) and sub-section (10), any private placement issue not made in compliance of the provisions of the subsection (2) shall be deemed to be a public offer and all the provisions of this Act and the Securities Contracts (Regulation) Act, 1956 and Securities and Exchange Board of India Act, 1992 shall be applicable.

## SHARE CAPITAL AND DEBENTURES

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### **Exemptions available to Private Companies in respect of kinds of share capital (section 43) and voting rights (section 47)**

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Section 43 of Companies Act, 2013, deals with kinds of share capital and Section 47 deals with voting rights. According to Section 43, a company may have two kinds of share capital viz. equity capital (with voting rights/with differential rights as to dividend, voting or otherwise) and preference share capital. It is to be noted that kind and class of capital may have different meaning. Kinds of capital means two kinds only viz. equity and preference. Class of capital may be equity with / without differential rights and preference capital may carry different rates of dividend.

This exemption will help in structuring investments in private companies through compulsorily convertible preference shares (CCPS) and compulsorily convertible debentures (CCDs). Private companies will be able to provide additional rights (including voting rights) to holders of CCDs and CCPS by issuing some additional shares with differential rights to the investors.

Private Companies will now have full flexibility in structuring their share capital. The exemption may boost investments as it gives freedom to private companies in case of joint venture or private equity funding to structure their capital and voting rights.

It may be noted that section 106 relating to restriction on voting rights is still applicable to a private company unless the Articles provides otherwise vide Notification No. G.S.R.464(E) dated 5<sup>th</sup> June, 2015.

Section 106 provides that company can prohibit its members from exercising his voting rights, by stating in the Articles of Association, only on the ground that shares on which any calls or other sums presently payable by him have not been paid or in regard to which the company has a right of lien and has exercised that right. However, private companies are given option to alter or omit provisions of Section 106 by making suitable provision in its articles of association.

This is similar to Section 90(2) of Companies Act, 1956 (1956 Act) which exempted private companies from complying with the provisions of kinds of capital as prescribed in Section 85 to 89 of the 1956 Act. Section 47 relating to voting rights corresponds to section 87 of the 1956 Act, which also exempted private companies.

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**ISSUE OF SWEAT EQUITY SHARES [Section 54]**

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- Sweat Equity Shares means such equity shares as are issued by a company to its directors or employees at a discount or for consideration, other than cash, for their providing know-how or making available rights in the nature of intellectual property rights or value additions, by whatever name called. [Section 2(88)]
- Sweat equity shares are different from shares issued by a company under Employee Stock Option Scheme (ESOS) and Employee Stock Purchase Scheme (ESPS).
- The rights, limitations, restrictions and provisions applicable to equity shares shall be applicable to sweat equity shares and holders of such shares shall rank pari-passu with other equity shareholders.

**Conditions for issuance of sweat equity shares [Section 54]**

- The issue should be authorized by a special resolution passed by the company;
- The resolution should specify the number of shares, the current market price, consideration, if any, and the class or classes of directors or employees to whom such equity shares are to be issued;
- Not less than one year has, at the date of such issue, elapsed since the date on which the company had commenced business; and
- The sweat equity shares should be issued in accordance with such rules made under the Chapter IV of the Companies Act, 2013.

**Compliance for Issue of Sweat Equity Shares**

- The company shall not issue sweat equity shares for more than 15% of the existing paid up equity in a year or shares of the issue value of Rs. 5 crores, whichever is higher.
- The issuance of such sweat equity shares in the company shall not exceed 25% percent of the paid up equity capital of the company at any time. However, a startup company may issue sweat equity shares not exceeding 50% of its paid up capital upto five years from the date of its incorporation or registration.

### Procedure for Issue of Sweat Equity Shares

- Convene and hold Board meeting to call the general meeting for considering the issue of sweat equity shares and to approve the notice of general meeting for this purpose.
- Issue notices in writing or through electronic mode, at least clear twenty one days before the date of meeting along with the explanatory statement [Section 102] containing the particulars prescribed under Rule 8(2) of the Companies (Share Capital & Debenture) Rules, 2014.
- A copy of gist along with critical elements of the valuation report shall be sent to the shareholders along with the notice of the general meeting.
- Hold the general meeting and pass the Special Resolution.
- The special resolution authorizing the issue of sweat equity shares shall be valid for making the allotment within a period of not more than 12 months from the date of passing of such special resolution.
- File the special resolution with the concerned ROC with explanatory statement in **Form MGT. 14** within 30 days of passing of the special resolution.
- Hold a Board Meeting for allotment of the Sweat Equity shares.
- Once the allotment is made, the company shall within 30 days of allotment, file with the Registrar a return of allotment in **Form PAS. 3**.
- The company shall maintain a register of Sweat Equity Shares in **Form SH 3** at the registered office or such other place as the Board may decide.
- The entries in the register shall be authenticated by the Company Secretary of the company or by any other person authorized by the board for the purpose.
- Deliver the share certificates of allotted shares within a period of 2 months from the date of allotment [Section 56(4)].
- Intimate the details of allotment of shares to the Depository immediately on allotment of such shares. (if the equity shares are in demat mode)

### Exemption for IFSC Private Company vide Notification No. G.S.R. 9(E) dated 4<sup>th</sup> January, 2017

Section 54 provides that, a company may issue sweat equity shares of a class of shares already issued, if the following conditions are fulfilled, namely –

- (c) Not less than one year has, at the date of such issue, elapsed since the date on which the company had commenced business.

Clause (c) is not applicable to IFSC Private Company.

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**ALTERATION OF SHARE CAPITAL OF A COMPANY [Section 61]**


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A Private Limited Company having a share capital may, if so authorised by its articles, can alter its memorandum in its general meeting to:–

- increase its authorised share capital
- consolidate and divide all or any of its share capital into shares of a larger amount than its existing shares.

Approval of Tribunal is required if the voting per cent of shareholder changes due to such consolidation and division (Rule 71 of the National Company Law Tribunal Rules, 2016) (Notified w.e.f. 1st June, 2016)

- convert all or any of its fully paid-up shares into stock, and reconvert that stock into fully paid-up shares of any denomination;
- sub-divide its shares, or any of them, into shares of smaller amount than is fixed by the memorandum; however, that in the sub-division the proportion between the amount paid and the amount, if any, unpaid on each reduced share shall be the same as it was in the case of the share from which the reduced share is derived and
- cancel shares which, at the date of the passing of the resolution in that behalf, have not been taken or agreed to be taken by any person, and diminish the amount of its share capital by the amount of the shares so cancelled. [Section 61(1)]

❖ **Compliance for Increasing Share Capital**

- To ensure authorisation under its Articles of Association (AOA). If not authorised by AOA, then the company has to take steps for its alteration according to Section 14.
- If the increase of share capital results in alteration of articles of association, pass special resolution for alteration in AOA in addition to ordinary resolution for change in capital clause of memorandum.
- Issue notice as per Section 173(3) of the Companies Act, 2013 for convening a Board meeting.
- Hold a Board meeting and pass a Board resolution for the calling of General Meeting for the purpose of increase in authorized share capital of the company.
- Issue a notice of the general meeting along with the Explanatory statement and the disclosure of current capital structure as required under section 60 of the Companies Act, 2013 and the said notice should be in accordance

with the SS-2 to every person entitled to attend the meeting as provided under section 101(3) of the Act.

- Hold the general meeting and pass special resolution or/and ordinary resolution, as the case may be, for increasing the authorised share capital of the company. [Section 13(1)]
- File with the Registrar within thirty days of passing of the resolution, **Form MGT – 14**, with a certified true copy of the special resolution along with a copy of the notice and explanatory statement, copy of altered Memorandum of Association and Articles of Association, if altered.
- File with ROC, **Form SH – 7** along with the registration fee on increased authorised capital within 30 days of the passing of the resolution. [Section 64 read with Rule 15]
- Alter the capital clause in all the copies of the memorandum and articles of association of the company lying at the registered office of the company so that no unaltered copy thereof is issued to any person.

#### ❖ Procedure for Consolidation of Share Capital

- Private Company to ensure that its articles of association contain a clause, authorizing it to consolidate its shares. If not present, then articles should be first altered as per the provisions of Section 14.
- Call a Board meeting to pass resolution for approving the notice to call general meeting for the purpose of approval for the consolidation of share capital by the members of the company.
- After passing of a Board Resolution, issue notice of the general meeting along with the explanatory statement, to all members, directors and auditors of the company as required under section 101(3) of the Act.
- Hold the general meeting and have the resolution (ordinary or/and special, as the case may be) passed.
- File with the ROC, **Form MGT-14** along with a certified copy of the resolution, notice and the explanatory statement and copy of altered Memorandum of Association and Articles of Association, within thirty days of the passing of the resolution.
- Give notice of the consolidation of the shares of the company, to the Registrar in **Form SH – 7**, within thirty days of the passing of the resolution, along with the prescribed filing fee specifying the shares consolidated. [Section 64 read with Rule 15]

- Make necessary changes in all the copies of the Memorandum of Association of the company lying in the office of the company so that no unaltered copy is issued to any person.

#### ❖ Procedure for Sub-Division of Share Capital

- Private Company to ensure that its articles of association contain a provision authorising it to sub-divide its shares. If not present then articles have to be altered as per Section 14.
- Call a Board meeting to pass resolution for approving the notice to call general meeting for the purpose of obtaining approval for the consolidation of share capital of the members of the company.
- After passing of a Board resolution, issue notice of the general meeting along with the explanatory statement, to all members, directors and auditors of the company as required u/s. 101(3).
- Hold the general meeting and have the resolution (ordinary or special, as the case may be) passed.
- File with the ROC, **Form MGT-14** along with a certified copy of the resolution, the notice and the explanatory statement and copy of altered Memorandum of Association and Articles of Association, within thirty days of the passing of the resolution along with the prescribed filing fee.
- Give notice of the consolidation of the shares of the company, to the Registrar in **Form SH-7**, within thirty days of the passing of the resolution, along with the prescribed filing fee specifying the shares consolidated. [Section 64 read with Rule 15]
- Make necessary changes in all the copies of the memorandum of association of the company lying in the office of the company so that no unaltered copy is issued to any person.

#### ❖ Stock and its Conversion

- Stock is the aggregate of the fully paid-up shares legally consolidated and portions of which aggregate may be transferred or split up into fractions of any amount without regard to the original nominal value of shares.
- The total amount of the share capital is divided into the number of shares. Each share has a fixed value. A share is a fixed unit of value. When a number of shares are converted into a single holding with a nominal value equal to that of the total value of the shares, it is called conversion of shares into stock. It may be noted that no company is authorised to issue stock directly even against payment of full nominal value in cash.

- The convenience of stock, besides its divisibility, is that it becomes no longer necessary in a transfer to specify all the number of various shares comprised in the transfer.
- Once converted into stock all the provisions of the Act applicable to shares, shall cease to apply on so much of the share capital as is converted into stock.

#### ❖ Procedure for Conversion of Fully Paid Shares into Stock

- The company to ensure that its articles of association contain a provision authorising it to convert its fully paid shares into stock. If not present then the articles have to be first altered as per Section 14.
- Call a Board meeting to pass resolution for approving the notice to call general meeting for the purpose of obtaining approval for the consolidation of share capital of the members of the company.
- After passing of a Board resolution, issue notice of the general meeting to the members, directors and auditors of the company as required u/s. 101(3).
- Hold the general meeting and have the special resolution and/or ordinary resolution passed.
- File with the ROC, **Form MGT-14** along with a certified copy of the resolution, the explanatory statement and copy of altered Memorandum of Association and Articles of Association, within 30 days of the passing of the resolution along with the prescribed filing fee.
- Give notice of the consolidation of the shares of the company, to the Registrar in **Form SH-7**, within 30 days of the passing of the resolution. [Section 64 read with Rule 15]
- Remove the names of the persons from the register of members of the company to whom stock has been issued in exchange for the shares.
- Make necessary alterations in all the copies of the memorandum of association of the company lying in the office of the company so that no unaltered copy is issued to any person.

#### ❖ Effect of conversion of shares into stock

- Where a company having a share capital has converted any of its shares into stock, and given notice of the conversion to the Registrar, all the provisions of this Act which are applicable to shares only, shall cease to apply on so much of the share capital as is converted into stock.

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**RIGHT ISSUE BY PRIVATE COMPANIES [Section 62]**


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**Relevant Section:** 62

- Where at any time, a company having a share capital proposes to increase its subscribed capital by the issue of further shares, such shares shall be offered and a letter of offer shall be sent to those persons who, at the date of the offer, are holders of equity shares of the company in proportion, as nearly as circumstances admit, to the paid-up share capital on those shares;
- the offer shall be made by notice specifying the number of shares offered and limiting a time not being less than 15 days and not exceeding 30 days from the date of the offer within which the offer, if not accepted, shall be deemed to have been declined;

Section 62 (1)(a)(i) requires companies issuing further shares to send notice along with offer letter to its equity shareholders and the offer shall remain open for subscription for minimum 15 days and maximum 30 days.

Further section 62(2) states that the offer letter to the existing shareholders under 62(1)(a)(i) has to be despatched at least 3 days before the opening of the issue.

A new proviso has now been added to section 62(1)(a) which states that the private companies can provide for:

- Period less than 15 days for accepting such offer made under Section 62(1)(a)(i) and
- for despatching of the offer letter, **less than 3 days before the opening of the issue**

if, 90% per cent of the members of a private company have given their consent in writing or in electronic mode.

A private company need not wait for minimum 15 days and may close its offer for rights issue in less than 15 days period [the period may be reduced to less than 15 days but cannot be extended beyond 30 days].

- unless the articles of the company otherwise provide, the offer aforesaid shall be deemed to include a right exercisable by the person concerned to renounce the shares offered to him or any of them in favour of any other person; and the notice referred to in clause (i) shall contain a statement of this right;
- after the expiry of the time specified in the notice aforesaid, or on receipt

of earlier intimation from the person to whom such notice is given that he declines to accept the shares offered, the Board of Directors may dispose of them in such manner which is not dis-advantageous to the shareholders and the company;

- The notice referred to in sub-clause (i) of clause (a) of sub-section (1) shall be despatched through registered post or speed post or through electronic mode to all the existing shareholders at least three days before the opening of the issue.
- Nothing in this section shall apply to the increase of the subscribed capital of a company caused by the exercise of an option as a term attached to the debentures issued or loan raised by the company to convert such debentures or loans into shares in the company. Provided that the terms of issue of such debentures or loan containing such an option have been approved before the issue of such debentures or the raising of loan by a special resolution passed by the company in general meeting.
- After the expiry of time or on decline of offer board may dispose of them in such manner which is not disadvantageous to the shareholders of the company.

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#### **ISSUE OF SHARES ON PREFERENTIAL BASIS**

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Section 62(1)(c) of the Companies Act, 2013, read with Rule 13 of Companies (Share Capital and Debentures) Rules, 2014, enables issue of shares to persons other than the existing shareholders/employees as specified in Section 62(1)(a) and Section 62(1)(b), provided if the same is approved by special resolution and subject to the conditions stated in the said Rule 13.

#### **Compliance for issue of shares on Preferential basis**

- Check whether the issue is authorized by Articles. If not make necessary amendments to alter the articles of association, through special resolution passed at the shareholders' meeting.
- Convene a Board Meeting to approve the notice of General Meeting and after passing of Board resolution for the same such notice of the general meeting containing necessary special resolution(s) along with explanatory statements as required to be approved by the members of the company be issued to the members and other persons entitled to attend such meeting under section 101(3) .
- It is to be noted that preferential issue of shares should be in compliance

with section 42 also, which relates to private placement. However, in case of preferential offer to one or more existing members the aspects relating to letter of offer as stated in rule 14(1) and proviso to rule 14(3) of Companies (Prospectus & Allotment of Securities) Rules, 2014, shall not apply.

- The company shall make the following disclosures as specified in rule 13 in the explanatory statement to be annexed to the notice of the general meeting pursuant to section 102 of the Act.
  - (i) the objects of the issue;
  - (ii) the total number of shares or other securities to be issued;
  - (iii) the price or price band at/within which the allotment is proposed;
  - (iv) basis on which the price has been arrived at along with report of the registered valuer;
  - (v) relevant date with reference to which the price has been arrived at;
  - (vi) the class or classes of persons to whom the allotment is proposed to be made;
  - (vii) intention of promoters, directors or key managerial personnel to subscribe to the offer;
  - (viii) the proposed time within which the allotment shall be completed;
  - (ix) the names of the proposed allottees and the percentage of post preferential offer capital that may be held by them;
  - (x) the change in control, if any, in the company that would occur consequent to the preferential offer;
  - (xi) the number of persons to whom allotment on preferential basis have already been made during the year, in terms of number of securities as well as price;
  - (xii) the justification for the allotment proposed to be made for consideration other than cash together with valuation report of the registered valuer.
  - (xiii) The pre issue and post issue shareholding pattern of the company in the prescribed format.
- Hold a duly Convened General Meeting and pass necessary Special Resolution(s). Ensure to file **Form MGT-14** with Registrar of Companies within 30 days of passing the Resolution.

- The allotment of securities on a preferential basis pursuant to the special resolution passed shall be completed within a period of 12 months from the date of passing of the special resolution.
- If the allotment of securities is not completed within 12 months from the date of passing of the special resolution, another special resolution shall be passed for the company to complete such allotment thereafter.
- The price of the shares or other securities to be issued on a preferential basis, either for cash or for consideration other than cash, shall be determined on the basis of valuation report of a registered valuer.
- Where shares or other securities are to be allotted for consideration other than cash, the valuation of such consideration shall be done by a registered valuer who shall submit a valuation report to the company giving justification for the valuation.
- Where the preferential offer of shares is made for non-cash consideration, such non-cash consideration shall be treated in the following manner in the books of account of the company-
  - Where the non-cash consideration takes the form of a depreciable or amortizable asset, it shall be carried to the balance sheet of the company in accordance with the accounting standards; or
  - Where the above clause is not applicable, it shall be expensed as provided in the accounting standards.
- Once the allotment is made, the company shall within 30 days of allotment, file with the Registrar a return of allotment in **Form PAS.3**, along with the fee as specified in Companies (Registration of Offices and Fees) Rules, 2014.
- The company shall deliver the share certificates in respect of the allotted shares within a period of 2 months from the date of allotment [Section 56(4)].

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#### **ISSUE OF BONUS SHARES [Section 63]**

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##### **Sources for issue of Bonus share**

- free reserves;
- securities premium account; or
- capital redemption reserve account.

No issue of bonus shares shall be made by capitalizing reserves created by the revaluation of assets. The bonus shares shall not be issued in lieu of dividend.

**Conditions for issue of Bonus Share**

- It is authorized by its articles;
- It has, on the recommendation of the Board, been authorized in the general meeting of the company;
- It has not defaulted in payment of interest or principal in respect of fixed deposits or debt securities issued by it;
- It has not defaulted in respect of the payment of statutory dues of the employees, such as contribution to provident fund, gratuity and bonus;
- The partly paid-up shares, if any outstanding on the date of allotment, are made fully paid-up;

**Restrictions on withdrawal of Bonus Issue [Rule 14]**

The company which has once announced the decision of its Board recommending a bonus issue shall not subsequently withdraw the same.

**Compliance for issue of Bonus share**

- Check whether the Articles of Association authorizes issue of bonus share. If not, then amend the Articles of Association of the company by passing the Special Resolution.
- Check whether the authorized capital of the company can accommodate the Bonus issue. In case it doesn't, then the authorized capital must be increased by making necessary alterations in the Memorandum/Articles of Association by passing Ordinary/special Resolution.
- Hold the Board Meeting for approval of the issue and to decide on the date, time and place of the general meeting.
- Following are a few crucial points to be checked in respect of the bonus issue:
  - Ensure that bonus issue has been made out of free reserves built out of the genuine profits or securities premium or capital redemption reserve account.
  - Ensure that reserves created by revaluation of assets are not capitalized.
  - Ensure that the company has not defaulted in payment of interest or principal in respect of fixed deposits and or debt securities issued by it or in respect of the payment of statutory dues of the employees such as contribution to provident fund, gratuity, bonus etc.

- Ensure that the bonus issue is not made in lieu of dividend.
- The company which has once announced the decision of its Board recommending a bonus issue shall not subsequently withdraw the same.
- If there are any partly paid-up shares, ensure that these are made fully paid-up before the bonus issue is recommended by the Board of directors.
- Hold the general meeting and get the resolution(s) for issue of bonus shares passed by the members.
- Once Special Resolution is passed for the alteration of the AOA, if required; file **Form MGT-14** along with the fees with the Registrar within 30 days of passing of the resolution along with the altered article of association.
- Within 30 days of allotment file with the registrar the Return of allotment in **Form PAS-3** along with fee as specified in Companies (Registration of Offices and Fees), Rules 2014.
- All share certificates shall be delivered to the shareholders within 2 months from the date of allotment of bonus shares as required under section 56(4).

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#### **REDUCTION OF SHARE CAPITAL [Section 66]**

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A company limited by shares or a company limited by guarantee and having a share capital may, subject to confirmation by Tribunal on an application made by the Company, reduce its share capital in any manner, by special resolution, and may –

- Extinguish or reduce the liability on any of its shares in respect of share capital not paid-up;
- Either with or without extinguishing or reducing liability on any of its shares, cancel any paid-up share capital which is lost, or is unrepresented by available assets; or
- Either with or without extinguishing or reducing liability on any of its shares, pay off any paid-up share capital which is in excess of the wants of the company, and alter its memorandum by reducing the amount of its share capital and of its shares accordingly.

#### **Procedure for Reduction of Share Capital [Section 66 read with National Company Law Tribunal (Procedure for reduction of share capital of Company) Rules, 2016]**

- Convene and hold a Board Meeting to approve scheme for reduction of share capital and other related issues.

- Issue notice of the general meeting to all members, directors and auditors of the company.
- Hold the general meeting and have the special resolution(s) passed.
- File **MGT-14** along with a certified true copy of the special resolution(s), copy of explanatory statement under section 102 and copy of altered Memorandum of Association, with the ROC within 30 days of the passing of the resolutions along with the prescribed filing fee.

#### **Form of application or petition for Reduction of share capital under Section 66**

- An application to the Tribunal be filed to confirm a reduction of share capital of a company in **Form No. RSC-1**. [As per the Schedule fee is Rs. 5000.]
- Copies of the list of creditors to be kept at the registered office. Any person can inspect and take extracts during the ordinary hours of business and on payment of the sum of Rs. 50 for inspection and for taking extracts on payment of the sum of Rs. 10 per page to the company.

#### **Issue of notice and directions by the National Company Law Tribunal**

- The Tribunal shall, within 15 days of submission of the application, give notice, or direct that notice be given to –
  - o the Central Government, Registrar of Companies, in all cases, in **Form No. RSC-2;**
  - o the creditors of the company, in all cases in **Form No. RSC-3;** seeking their representations and objections, if any.
- The notice to be sent to creditors shall be sent, within 7 days of the direction given or such other period as directed by the Tribunal, to each creditor whose name is in the list of creditors submitted by the company about the presentation of the application and of the said list, stating the amount of the proposed reduction of share capital and the amount or estimated value of the debt or the contingent debt or claim or both for which such creditor's name is entered in the said list, and the time within which the creditor may send his representations and objections.
- The Tribunal also to give directions for the notice to be published, in **Form No. RSC-4** within 7 days from the date on which directions are given, in a leading English newspaper and in a leading vernacular language newspaper, both having wide circulation in State where registered office is situated, or such newspapers as directed by Tribunal and for uploading on website of the company (if any), seeking objections from the creditors and intimating about the date of hearing.

- The notice to state amount of proposed reduction of share capital, and the places, where the aforesaid list of creditors may be inspected, and the time fixed by Tribunal within which creditors may send their objections.
- The objections, if any, to be filed with the Tribunal within 3 months from the date of publication of the notice with a copy served to the company.
- The company or the person directed to issue notices and publication in newspaper, file an affidavit in **Form No. RSC- 5** confirming dispatch and publication of the notices, not later than seven days from the date of issue of such notices.
- Where Tribunal is satisfied that debt or claim of every creditor has been discharged or determined or secured or his consent is obtained, it may dispense with requirement of giving of notice to creditors or/and publication of notice.

**Representation by Central Government, Registrar etc. [Section 66(2), Rule 4 of the NCLT (Procedure for reduction of Share Capital of Company) Rules, 2016]**

- If the authorities or creditors to whom notice was given, desire to make representation, the same be sent to the Tribunal within 3 months from date of receipt of notice and a copy simultaneously to be sent to the company and in case no representation received by the Tribunal it shall be presumed that there is no objection.

**Procedure with regard to representations and objections received.**

- The company shall submit representations or objections received along with its responses to the Tribunal, within 7 days of expiry of period upto which representations or objections were sought to be received.
- The Tribunal may give directions to hold any enquiry or adjudication of claims or for hearing the objection or otherwise.
- At the hearing of the application, the Tribunal may give directions as may deem proper with reference to securing the debts or claims of creditors who do not consent to the proposed reduction, and the further hearing of the petition may be adjourned to enable the company to comply with such directions.

**Order on application and Minute thereof:-**

- Where the Tribunal makes an order confirming a reduction and approving the minute may include directions or terms and conditions as the Tribunal deems fit.

- The order confirming the reduction of share capital and approving the minute shall be in **Form No. RSC-6**.
- The Certificate issued by the Registrar shall be in **Form No. RSC-7**. [Section 66(5)]

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**POWER OF COMPANY TO PURCHASE ITS OWN SECURITIES (BUY BACK OF SHARES) [Section 68]**

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A Private company may purchase its own shares or other specified securities out of:

- its free reserves; or
- the securities premium account; or
- the proceeds of the issue of any shares or other specified securities.

**Quantum of Buyback**

- Board of directors can approve by a board resolution buy-back up to 10% of the total paid-up equity capital and free reserves of the company.
- Shareholders by a special resolution can approve buy-back up to 25% of the total paid-up capital and free reserves of the company.

Provided that no buy-back of any kind of shares or other specified securities shall be made out of the proceeds of an earlier issue of the same kind of shares or same kind of other specified securities.

**Post buy-back debt-equity ratio**

The ratio of the aggregate of secured and unsecured debts owed by the company after buy-back is not more than twice the paid-up capital and its free reserves i.e. the ratio shall not exceed 2:1. However, the Central Government may, by order, notify a higher ratio. All the shares or specified securities for buy-back are to be fully paid-up.

**Time gap**

No offer of buy-back shall be made within a period of one year reckoned from the date of closure of the preceding offer of buy-back.

**Compliance for Buy Back of Share**

**Where the company is required to obtain approval of the members by special resolution, the explanatory statement to be annexed to the notice of the general meeting pursuant to section 102 shall contain all the disclosures contained in Rule 17(1).**

- The company which has been authorized by a special resolution shall, before buy-back of shares, file with the ROC a letter of offer in **Form No. SH-8**. [Rule 17(2)]
- Along with the letter of offer, the company shall file a Declaration of Solvency in **Form SH-9** with the Registrar. The Declaration shall be signed by not less than two directors, one of whom shall be the managing director, where there is one.
- Such letter of offer to be dated and signed on behalf of the Board of directors by not less than two directors of the company, one of whom shall be the managing director, where there is one.
- The letter of offer shall be dispatched to shareholders or security holders immediately but not later than 21 days from its filing with the Registrar of Companies.
- The letter of offer to contain true, factual and material information and not misleading information and must state that the directors accept the responsibility for the information contained in such document. [Rule 17(10)]
- The offer for buy-back shall remain open for a minimum 15 days and maximum 30 days from the date of dispatch of letter of offer. However, where all members of a company agree, the offer for buyback may remain open for a period less than 15 days.
- If the number of shares or specified securities offered by the shareholders or security holders is more than the total number of shares or securities to be bought back by the company, the acceptance per shareholder shall be on proportionate basis out of the total shares offered for being bought back.
- The company shall complete the verifications of the offers received within 15 days from the date of closure of the offer and the shares or other securities lodged shall be deemed to be accepted unless a communication of rejection is made within 21 days from the date of closure of the offer.
- The company shall within 7 days of the time limit of verification:
  - o make payment of consideration in cash to those shareholders or security holders whose securities have been accepted, or
  - o return the share certificates to the shareholders or security holders whose securities have not been accepted at all or the balance of securities in case of part acceptance.
- The company shall immediately after closure of the offer, open a separate

bank account and deposit therein, such sum, as would make up the entire sum due and payable as consideration for the shares tendered for buy-back.

- The company shall not withdraw the offer once it has announced the offer to the shareholders;
- The company shall not utilize any money borrowed from banks or financial institutions for the purpose of buying back its shares;
- The company shall not utilize the proceeds of an earlier issue of the same kind of shares or same kind of other specified securities for the buy-back.
- Every buy-back shall be completed within a period of one year from the date of passing of the special resolution or the Board resolution.
- After completion of buy back, the company shall file with the Registrar a return in **Form SH.11** along with fee. A certificate in **Form No. SH.15** signed by two directors of the company including the managing director, if any, certifying that the buy-back of securities has been made in compliance with the provisions of the Act and the rules made thereunder shall be annexed to the return.
- The company, shall maintain a register of shares or other securities which have been bought-back in **Form No. SH.10**.

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## **TRANSFER OF SHARES [Section 56]**

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### **Transferability of Shares in a Private Company**

- Shares of a private company are not marketable securities due to the restrictions on right to transfer.
- Section 2(68) restricts the right to transfer shares but does not prohibit the right to transfer shares.
- The provisions or restrictions contained in the Articles of Association of a Private Company should be duly complied with by the transferor and transferee.
- Shares or debentures or other interest of any member in a company shall be movable property, transferable in the manner provided by the Articles of the company. [Section 44]
- Therefore, there cannot be an absolute prohibition on the right to transfer shares. But it can be subjected to permissible restrictions contained in the articles.

**Restrictions upon transfer of shares in private companies are not applicable in following cases:**

- On the right of a member to transfer his/ her shares in case where the shares are to be transferred to his/her representative(s).
- In the event of death of a shareholder, legal representatives may require the registration of shares in the names of heirs, on whom the shares have devolved.
- Shares proposed to be issued on a right basis and if the existing shareholders renounce their shares then these shares will be allotted to renouncee(s) for the first time and therefore no transfer of shares will take place.

**Compliance for Transfer of Shares in a Private Company**

- Obtain the share transfer deed in **Form No. SH-4**, endorsed by the prescribed authority.
- The instrument of transfer may not be in the prescribed form in case shares are transferred:-
  - by a director or nominee on behalf of another body corporate under section 187.
  - by a director or nominee on behalf of a corporation owned or controlled by the central or state Government;
  - by way of deposit as a security for repayment of any loan or advance if made with State Bank of India/any scheduled bank/any other banking company/ Financial Institution/Central Government/ State Government/any corporation owned or controlled by Central or State Government/Trustees who have filed the declarations.
- For transferring debentures, the instrument of transfer need not be in prescribed form but any standard format can be used, being convenient to do so.
- For transferring shares, get the transfer deed duly executed by the transferor and the transferee or on their behalf as per section 56 and the Articles of Association and also in accordance with trust deed in the case of debentures.
- Requirement of execution of the transfer form by each of the joint shareholders cannot be met by execution of the transfer form by one of the shareholders even though between the shareholders inter se there is

an agreement that one shareholder can sign on behalf of all other shareholders

- The transfer deed should bear stamps according to Indian Stamp Act, 1899 and stamp duty notification in force in the state concerned. Present rate of stamp duty for transfer of shares is 25 paise for every Rs. 100 rupees of the value of share or part thereof.
- See that stamp affixed on the transfer deed is cancelled at the time or before signing of the transfer deed.
- The signatures of the transferor and the transferee in the share/debentures transfer deed must be witnessed by a person giving his signature, name and address.
- Attach the relevant share or debenture certificate or allotment letter with transfer deed and deliver to the company within the time limit.
- Where the application is made by the transferor and relates to partly paid shares, the company has to give due notice of the amount due on shares/debentures to the transferee and the transferee may, if he so desire, raise objections, if any within 2 weeks from the date of receipt of the said notice.
- A company shall not register a transfer of partly paid shares, unless the company has given a notice in **Form No.SH.5** to the transferee and the transferee has given no objection to the transfer within two weeks from the date of receipt of notice.
- If signed transfer deed has been lost, affix the same stamp on a written application. In such case, the Board may, if it thinks fit to do so, register the transfer on such terms of indemnity as it thinks fit.

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#### **TRANSMISSION OF SHARES [Section 56]**

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- Transmission of shares is a process of transfer of shares or interest by operation of law, where under the shares registered in a company in the name of a deceased person or an insolvent person are registered in the name of his legal heirs by the company on proof of death or insolvency and on the establishment of right and title of the heirs on the deceased member's shares.
- A transmission of shares or other interest in a company of a deceased member thereof made by the legal representative of a deceased member of the company shall be considered as transmission of shares by operation of law and will be registered by a company in the register of members.

**Compliance for Transmission of Shares**

- On receipt of the intimation about the death or lunacy or insolvency of a member, the company should write to the person who intimated the company about the death or lunacy or insolvency of the member, to enquire whether the deceased member had left a Will or there has been a proper order by a competent Court of law in the event of the member's insolvency or lunacy, and whether the heirs of the deceased member had applied to a Court and obtained or would be applying to Court of law for the issue of a succession certificate.
- In case of insolvency of a member, his shares vest in the Official Receiver, who may get himself registered as holder of the shares or dispose them off. He is also entitled to disclaim partly-paid shares or fully paid shares which are subject to charge, hypothecation or any other encumbrance.
- If shares are jointly held and one of them passes away, the company may transmit the shares in the name of the surviving holder. If there are more than one surviving holders, the company must insist on all of them jointly signing the application for such transmission, subject to the provisions contained in the AOA.
- In case of transmission of shares no formal instrument of transfer is required nor share transfer stamps are required to be affixed on the application for transmission of shares
- The company must thoroughly check the application for transmission of shares i.e. whether it contains correct details of the deceased member, e.g., his name, address, occupation, father's/ husband's name, his shareholding and is accompanied by the relevant share certificates.
- The applicant has sent along with the application –
  - o The deceased member's death certificate, along with a certified true copy thereof ;
  - o succession certificate, if the deceased member has left no Will;
  - o if the deceased member has left a Will, probate thereof or letter of administration;
  - o affidavit by the legal heir declaring his right in the shares; and
  - o indemnity bond binding him and his heirs, assigns etc. to indemnify the company in the event of the company having to face any proceedings, incur some loss etc.

- The company must receive attested signature(s) of the applicant heir(s) duly certified by a competent person, e.g., a Magistrate, a Judge of a High Court, a Gazetted Officer, a Notary Public, an Oath Commissioner, a Bank Manager, or a member of a recognised stock exchange, for its record.
- If the succession certificate entitles more than one heir to the properties of the deceased member including the shares in the company, the company must register the shares in the joint names of all the heirs. However, if they want the shares to be registered in the name of one of them, then the company must obtain from the remaining heirs a letter of disclaimer on a non-judicial stamp paper of the value applicable in the State where the disclaimer is signed and executed, disclaiming their rights in the shares and entitling the said heir to have the shares transmitted and the transmission registered in his name.
- Alternatively, the shares must first be registered in the joint names of all the heirs and thereafter the disclaiming heirs may transfer their respective share in the shares under reference by means of a regular share transfer.
- The company secretary should place the application for transmission of the shares along with the relevant documents received therewith, before the Board of directors of the company or the Share Transfer/Transmission Committee, if there is one, for its consideration and approval.
- As soon as the transmission is approved by means of a resolution of the Board or the Committee, the secretary should enter the name(s) of the authorized heir(s) in the register of members of the company and send the share certificates to the registered members, after appropriately endorsing them in their names.

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### **ISSUE OF DEBENTURES [Section 71]**

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A debenture is an instrument of debt executed by the company acknowledging its obligation to repay the sum at a specified rate of interest. It is one of the methods of raising the loan capital of the company.

“Debenture” includes debenture stock, bonds or any other instrument of a company evidencing a debt, whether constituting a charge on the assets of the company or not. [Section 2(30)]

The debentures in a company is a movable property, transferable in the manner provided by the articles of the company. [Section 44]

- Any company may issue debentures with an option to convert such debentures into shares, either wholly or partly at the time of redemption. [Section 71(1)]

- The debentures can be issued in the same manner as shares in a company. But unlike shares, debentures can be issued at a discount or at a premium.
- No Company can issue debentures carrying voting rights.
- Any company can issue secured or unsecured debentures.
- For secured debentures conditions for issue of secured debentures under the Companies Act, 2013, have to be followed. Debenture trustee has to be appointed and the trust deed in **Form No. SH-12** has to be executed within three months of closure of the issue or offer.
- Any company can issue debentures which are convertible or non-convertible.
- For convertible debentures, a special resolution should be passed at a general meeting.
- A company shall pay interest and redeem the debentures in accordance with the terms and conditions of their issue. Interest payable on them is a debt and can be paid out of capital. There is no ceiling, minimum or maximum, for the rate of interest payable on debentures.
- Where debentures are issued by a company, the company shall create a debenture redemption reserve account out of the profits of the company available for payment of dividend and the amount credited to such account shall not be utilised by the company except for the redemption of debentures. The Debenture Redemption Reserve shall be created in accordance with the conditions contained in sub rule 7(b) of Rule 18 of the Companies(Share Capital and Debentures) Rules, 2014.
- Where a company fails to redeem the debentures on the date of their maturity or fails to pay interest on the debentures when it is due, the Tribunal may, on the application of any or all of the debenture-holders, or debenture trustee and, after hearing the parties concerned, direct, by order, the company to redeem the debentures forthwith on payment of principal and interest due thereon. (Notified w.e.f. 1st June, 2016)
- A contract with the company to take up and pay for any debentures of the company may be enforced by a decree for specific performance.
- No company shall issue any debentures carrying any voting rights. [Section 71(2)]

**Mandatory Conditions for Issue of Secured Debentures [Section 71(3) read with Rule 18(1)]**

- An issue of secured debentures may be made, provided the date of its redemption shall not exceed 10 years from the date of issue. The following classes of Companies may issue secured debentures for a period exceeding 10 years but not exceeding 30 years,
    - o Companies engaged in setting up of infrastructure projects;
    - o 'Infrastructure Finance Companies' as defined in clause (viiia) of sub-direction (1) of direction 2 of Non-Banking Financial (Non-deposit accepting or holding) Companies Prudential Norms (Reserve Bank) Directions, 2007;
    - o 'Infrastructure Debt Fund Non-Banking Financial Companies' as defined in clause (b) of direction 3 of Infrastructure Debt Fund Non-Banking Financial Companies (Reserve Bank) Directions, 2011;
    - o Companies permitted by a Ministry or Department of the Central Government or by Reserve Bank of India or by the National Housing Bank or by any other statutory authority to issue debentures for a period exceeding ten years.
  - such an issue of debentures shall be secured by the creation of a charge, on the properties or assets of the company or its subsidiaries or its holding company or its associate companies, having a value which is sufficient for the due repayment of the amount of debentures and interest thereon;
  - the company shall appoint a debenture trustee before the issue of prospectus or letter of offer for subscription of its debentures and not later than sixty days after the allotment of the debentures, execute a debenture trust deed to protect the interest of the debenture holders ; and
  - the security for the debentures by way of a charge or mortgage shall be created in favour of the debenture trustee on –
    - o any specific movable property of the company; or its holding company or subsidiaries or associate companies or otherwise;
    - o any specific immovable property wherever situate, or any interest therein:
    - o Provided that in case of a non-banking financial company, the charge or mortgage under sub- clause (i)
- may be created on any movable property.

- In case of any loan taken by a subsidiary company from any bank or financial institution the charge or mortgage may also be created on the properties or assets of the holding company.

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**OTHER IMPORTANT EXEMPTIONS TO PRIVATE COMPANIES IN CHAPTER IV**

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**SECTION 67 SHALL NOT APPLY TO PRIVATE COMPANIES SUBJECT TO CONDITIONS**

Section 67 deals with restrictions on purchase by a company of its own shares or giving of loans by it for purchase of its shares.

The provisions of Section 67 of Companies Act, 2013 have been exempted for Private Companies vide Notification No. G.S.R.464(E) dated 5<sup>th</sup> June, 2015 .

- I. in whose share capital no other body corporate has invested any money;
- II. If borrowings of such private company from banks or financial institutions or any body-corporate is less than twice its paid up share capital or Rs. 50 crore, whichever is lower; and
- III. such a company is not in default in repayment of such borrowings subsisting at the time of making transactions under this section.

Section 67 is similar to Section 77 of the 1956 Act which had exempted private companies (which are not subsidiaries of public companies) from the provisions of this section. However, the three conditions mentioned in Section 67 now are new.

## ACCEPTANCE OF DEPOSITS BY PRIVATE COMPANIES

### Relevant Sections and Rules

Section 73 of the Companies Act, 2013 read with the Companies (Acceptance of Deposits) Rules, 2014.

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### MEANING OF DEPOSITS

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According to Section 2(31) of the Act read with Rule 2(1)(c) of Companies (Acceptance of Deposits) Rules, 2014, defines the term “deposit” to include any receipt of money by way of deposit or loan or in any other form, by a company, but does not include such categories of amounts as may be prescribed in these rules in consultation with the Reserve Bank of India.

Some of the receipts which are specifically excluded from the definition of deposits are (relevant for private companies) :

- (vi) any amount received by a company from any other company;
- (viii) any amount received from a person who, at the time of the receipt of the amount, was a director of the company or a relative of the director of the Private company:

Provided that the director of the company or relative of the director of the private company, as the case may be, from whom money is received, furnishes to the company at the time of giving the money, a declaration in writing to the effect that the amount is not being given out of funds acquired by him by borrowing or accepting loans or deposits from others and the company shall disclose the details of money so accepted in the Board's report;

- (ix) any amount raised by the issue of bonds or debentures secured by a first charge or a charge ranking pari passu with the first charge on any assets referred to in Schedule III of the Act excluding intangible assets of the

company or bonds or debentures compulsorily convertible into shares of the company within Ten years :

Provided that if such bonds or debentures are secured by the charge of any assets referred to in Schedule III of the Act, excluding intangible assets, the amount of such bonds or debentures shall not exceed the market value of such assets as assessed by a registered valuer;

- (x) any amount received from an employee of the company not exceeding his annual salary under a contract of employment with the company in the nature of non-interest bearing security deposit;
- (xi) any non-interest bearing amount received and held in trust;
- (xii) any amount received in the course of, or for the purposes of, the business of the company, –
  - (a) as an advance for the supply of goods or provision of services accounted for in any manner whatsoever provided that such advance is appropriated against supply of goods or provision of services within a period of three hundred and sixty five days from the date of acceptance of such advance:

Provided that in case of any advance which is subject matter of any legal proceedings before any court of law, the said time limit of three hundred and sixty five days shall not apply:
  - (b) as advance, accounted for in any manner whatsoever, received in connection with consideration for an immovable property under an agreement or arrangement, provided that such advance is adjusted against such property in accordance with the terms of agreement or arrangement;
  - (c) as security deposit for the performance of the contract for supply of goods or provision of services;
  - (d) as advance received under long term projects for supply of capital goods except those covered under item (b) above:
  - (e) as an advance towards consideration for providing future services in the form of a warranty or maintenance contract as per written agreement or arrangement, if the period for providing such services does not exceed the period prevalent as per common business practice or five years, from the date of acceptance of such service whichever is less;

- (f) as an advance received and as allowed by any sectoral regulator or in accordance with directions of Central or State Government;
- (g) as an advance for subscription towards publication, whether in print or in electronic to be adjusted against receipt of such publications;

Provided that if the amount received under items (a), (b) and (d) above becomes refundable (with or without interest) due to the reasons that the company accepting the money does not have necessary permission or approval, wherever required, to deal in the goods or properties or services for which the money is taken, then the amount received shall be deemed to be a deposit under these rules:

*Explanation.* - For the purposes of this sub-clause the amount shall be deemed to be deposits on the expiry of fifteen days from the date they become due for refund.

- (xiii) any amount brought in by the promoters of the company by way of unsecured loan in pursuance of the stipulation of any lending financial institution or a bank subject to fulfillment of the following conditions, namely:-
  - (a) the loan is brought in pursuance of the stipulation imposed by the lending institutions on the promoters to contribute such finance;
  - (b) the loan is provided by the promoters themselves or by their relatives or by both; and
  - (c) the exemption under this sub-clause shall be available only till the loans of financial institution or bank are repaid and not thereafter;
- (xiv) an amount of twenty five lakh rupees or more received by a start-up company, by way of a convertible note (convertible into equity shares or repayable within a period not exceeding five years from the date of issue) in a single tranche, from a person.

*Explanation.* – For the purposes of this sub-clause, –

- I. “start-up company” means a private company incorporated under the Companies Act, 2013 or Companies Act, 1956 and recognised as such in accordance with notification number G.S.R. 180(E) dated 17th, February, 2016 issued by the Department of Industrial Policy and Promotion, Ministry of Commerce and Industry;
- II. “convertible note” means an instrument evidencing receipt of money initially as a debt, which is repayable at the option of the holder, or which is convertible into such number of equity shares of the start-

up company upon occurrence of specified events and as per the other terms and conditions agreed to and indicated in the instrument.

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**ACCEPTANCE OF DEPOSITS BY PRIVATE COMPANIES**

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Companies are prohibited from inviting, accepting or renewing deposits from public.

Only eligible companies (public limited companies with net worth of Rs. 100 crore or turnover of Rs. 500 crore or more) can invite, accept or renew deposits from public subject to several stringent conditions.

Private Companies can accept deposit from members by passing a Resolution in general meeting and by complying with the rules as prescribed in consultation with Reserve Bank of India, on following terms and conditions as are prescribed in the Section 73(2)(a) to (f) of Companies Act, 2013:

- (a) issuance of a circular to its members including therein a statement showing the financial position of the company, the credit rating obtained, the total number of depositors and the amount due towards deposits in respect of any previous deposits accepted by the company and such other particulars in such form and in such manner as may be prescribed;
- (b) filing a copy of the circular along with such statement with the Registrar within thirty days before the date of issue of the circular;
- (c) depositing such sum which shall not be less than fifteen per cent of the amount of its deposits maturing during a financial year and the financial year next following, and kept in a scheduled bank in a separate bank account to be called as deposit repayment reserve account;
- (d) providing such deposit insurance in such manner and to such extent as may be prescribed;
- (e) certifying that the company has not committed any default in the repayment of deposits accepted either before or after the commencement of this Act or payment of interest on such deposits; and
- (f) providing security, if any for the due repayment of the amount of deposit or the interest thereon including the creation of such charge on the property or assets of the company:

Provided that in case where a company does not secure the deposits or secures such deposits partially, then, the deposits shall be termed as “unsecured deposits” and shall be so quoted in every circular, form, advertisement or in any document related to invitation or acceptance of deposits.

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**EXCEPTIONS (EXEMPTIONS) FOR PRIVATE COMPANIES**

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Clause (a) to (e) of Sub-section 2 of Section 73 shall not apply to private Companies which accepts from its members monies not exceeding one hundred per cent, of aggregate of the paid up share capital and free reserves, and such company shall file the details of monies so accepted to the Registrar in such manner as may be specified.

*[Refer MCA Notification No. G.S.R. 464(E) dated 5th June, 2015]*

[In this regard also refer MCA Notification dated 13th June, 2017, which amends the previous exemption notification for private companies dated 5th June, 2015, – Page No. 41]

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**QUANTUM OF DEPOSITS THAT CAN BE ACCEPTED BY PRIVATE COMPANY**

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A private company may accept from its members monies not exceeding 100% of aggregate of the paid-up share capital, free reserves and such company shall file the details of monies so accepted to the Registrar in such manner as may be specified.

**PERIOD OF DEPOSIT**

The period of Deposit shall be for a period which is more than 6 months but less than 36 months, and the deposit shall not be repayable on Demand.

**RATE OF INTEREST**

The deposits shall not be invited or accepted or renewed in any form, carrying a rate of interest or pay brokerage thereon at a rate exceeding the maximum rate of interest or brokerage prescribed by the Reserve Bank of India for acceptance of deposits by non-banking financial companies.

**REGISTER OF DEPOSITS**

Every company accepting deposits shall maintain at its registered office one or more separate registers for deposits accepted or renewed, in which there shall be entered separately in the case of each depositor the particulars as specified in Rule 14 as under :

- (a) name, address and PAN of the depositor(s);
- (b) particulars of guardian, in case of a minor;
- (c) particulars of the nominee;
- (d) deposit receipt number;

- (e) date and the amount of each deposit;
- (f) duration of the deposit and the date on which each deposit is repayable;
- (g) rate of interest or such deposits to be payable to the depositor;
- (h) due date for payment of interest;
- (i) mandate and instructions for payment of interest and for non-deduction of tax at source, if any;
- (j) date or dates on which the payment of interest shall be made;
- (k) details of deposit insurance including extent of deposit insurance;
- (l) particulars of security or charge created for repayment of deposits;
- (m) any other relevant particulars;

The entries shall be made within 7 days from the date of issuance of the receipt duly authenticated by a director or secretary of the company or by any other officer authorised by the Board for this purpose.

The register shall be preserved in good order for a period of not less than 8 years from the financial year in which the latest entry is made in the register.

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**DISCLOSURE IN THE FINANCIAL STATEMENT AND BOARD'S REPORT**

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Every private company shall disclose in its financial statement, by way of notes, about the money received from the directors or relatives of directors.

The report of the Board shall also contain the details relating to deposits, covered under Chapter V of the Act, –

- (a) accepted during the year;
- (b) remained unpaid or unclaimed as at the end of the year;
- (c) whether there has been any default in repayment of deposits or payment of interest thereon during the year and if so, number of such cases and the total amount involved –
  - (i) at the beginning of the year;
  - (ii) maximum during the year;
  - (iii) at the end of the year;

And, the details of deposits which are not in compliance with the requirements of Chapter V of the Act. (Rule 8(5) of the Companies (Accounts) Rules, 2014)

## REGISTRATION OF CHARGES

### Relevant Sections and Rules

Section 77 to 87 of the Companies Act, 2013 read with the Companies (Registration of Charges) Rules, 2014

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### MEANING OF 'CHARGE'

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Section 2(16) provides that "charge" means an interest or lien created on the property or assets of a company or any of its undertakings or both as security and includes a mortgage.

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### CREATION/MODIFICATION OF CHARGE

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- The company to file the particulars of the charge together with a copy of the instrument creating or modifying the charge 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 with the Registrar within a period of 30 days of the date of creation or modification of charge along with the fee (**Rule 3**).

Companies (Amendment) Bill, 2016, provides that Registration of charge shall not apply to such charges as may be prescribed in consultation with the Reserve Bank of India.

- The company may file application for delay in **Form No. CHG-1** and supported by declaration that such belated filing shall not adversely affect the rights of any other intervening creditors. The Registrar may allow the registration of charge with additional fee, if the particulars of a charge are not filed within 30 days of creation or modification, but filed within a period of 300 days of the date of such creation or modification (**Rule 4**).
- Where a charge is registered with the Registrar u/s 77 or 78, he shall issue a certificate of registration of such charge in **Form No. CHG-2 (Rule 6)**.
- Where the particulars of modification of charge is registered u/s 79, the Registrar shall issue a certificate of modification of charge in **Form No. CHG-3**.

**Condonation of Delay by Central Government**

- Where the instrument creating or modifying a charge is not filed within a period of 300 days from the date of its creation or modification (including acquisition of a property subject to a charge), the delay is required to be condoned by the Central Government.
- Application for condonation of delay shall be filed with the Central Government in **Form No. CHG-8** along with the fee (**Rule 12**).
- The order passed by the Central Government shall be filed with the Registrar in **Form No. INC.28** within a period of 30 days. Thereafter, the Registrar shall issue Certificate of Registration.

**Charge holder may register the Charge**

- If the company fails to register the particulars of the charge with the Registrar within the period of 30 days of its creation or modification, the particulars of the charge may be filed by the charge-holder, in **Form No. CHG- 1** or **Form No. CHG-9**, as the case may be, duly signed along with fee [**Rule 3(3)**].
- The Registrar, may within 14 days, after giving notice to the Company as to why such charge should not be registered, allow registration with payment of fee (subject to paying additional fee for delay) [**Section 78**].

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**SATISFACTION OF CHARGE**

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- The company to file **Form No. CHG-4** with the Registrar along with the fee, within a period of 30 days from the date of the payment or satisfaction in full of any charge registered under Chapter VI (**Rule 8**).
- In case the intimation to the Registrar in this regard is not in the specified form and not signed by the holder of charge, the Registrar to issue a show cause notice to the charge holder within such time not exceeding 14 days as to why the satisfaction in full should not be recorded. Notice is not required to be sent in case the intimation to the Registrar is in the specified form and signed by the charge holder.
- If any cause is shown, the Registrar shall record a note to that effect in the register of charges and shall inform the company (**Section 82**).
- If no cause is shown, the Registrar enters a memorandum of satisfaction of charge in full and issues a certificate of registration of satisfaction of charge in **Form No. CHG-5 (Rule 8)**.
- Where the satisfaction of the charge is not filed within 30 days from the

date on which such payment of satisfaction, the delay is required to be condoned by the Central Government. Application for condonation of delay shall be filed with the Central Government in **Form No. CHG-8** along with the fee **(Rule 12)**.

- The order passed by the Central Government shall be filed with the Registrar in **Form No. INC 28** within a period of 30 days. Thereafter, the Registrar enters a memorandum of satisfaction of charge in full and issues a certificate of registration of satisfaction of charge in Form No. **CHG-5 [Rule 8(2)]**.
- The Companies (Amendment) Bill, 2016, proposes to insert following proviso to section 82(1):

“Provided that the Registrar may, on an application by the company or the charge holder, allow such intimation of payment or satisfaction to be made within a period of three hundred days of such payment or satisfaction on payment of such additional fees as may be prescribed.”

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#### **COMPANY TO MAINTAIN REGISTER OF CHARGES (Rule 10)**

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- The company to keep at its registered office, a register of charges in **Form No. CHG-7** and enter forthwith therein particulars of all the charges registered with the Registrar 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.
- Entries in the register shall be authenticated by a director or the secretary of the company or any other person authorised by the Board for the purpose.
- The register of charges shall be preserved permanently and the instrument creating a charge or modification thereon shall be preserved for a period of eight years from the date of satisfaction of charge by the company. **(Rule 10)**
- The register of charges and the instrument of charges kept by the company shall be open for inspection –
  - (a) by any member or creditor of the company without fees;
  - (b) by any other person on payment of fee **(Rule 11)**.

## MANAGEMENT AND ADMINISTRATION

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### **PRIVATE COMPANIES EXEMPTED FROM FILING RESOLUTIONS PUSUANCE TO SECTION 179(3) i.e. REQUIRED TO BE PASSED ONLY AT THE MEETING OF BOARD OF DIRECTORS**

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Section 117 deals with resolutions and agreements to be filed with Registrar as prescribed u/s. 117(3) . Section 117(1) provides that such resolutions as mentioned in Section 117(3) shall be filed within 30 days from the date of passing of such resolutions in **Form MGT-14**.

In case of a Specified IFSC private company, the time period for the filing of such resolutions as mentioned in section 117(3) is sixty days instead of thirty days unlike the other companies vide Notification No. G.S.R. 9(E) dated 4th January 2017.

Section 117(3)(g) deals with filing of resolutions passed in pursuance of sub-section (3) of section 179 (i.e., resolutions to be passed only at the meeting of Board of directors).

Private companies have now been exempted from provisions of Section 117(3)(g). Accordingly private companies do not have to file resolutions with the Registrar with respect to resolutions passed at the Board Meeting under Section 179(3).

Section 179(3) provides that Board shall exercise certain powers by means of a resolution passed at meeting of the Board in respect of the following to;-

- Make calls on the shareholders
- Issue securities
- Authorise buy- back
- Borrow monies
- Invest funds of the company
- Grant Loans/give guarantee/ provide security in respect of loans
- Approve financial statements and the Board's report

- Diversify the business of the company
- Approve merger, amalgamation or reconstruction
- Takeover a company or acquire a controlling or substantial stake in another company
- Make political contributions
- Appoint or remove Key Managerial Personnel (KMP)
- Appoint internal auditors and secretarial auditors

The requirement of filing **Form No. MGT. 14** for resolutions passed by the Board in exercise of its powers u/s. 179(3) is no longer applicable to a private company. The exemption from filing is a major relief as board minutes of a private company are considered as a internal matters and the filing requirement was perceived as a huge compliance burden.

In case of a Specified IFSC private company, the Board can exercise powers by means of resolutions passed at the meetings of the Board or through resolutions passed by circulation.” (Refer Notification No. G.S.R. 9(E) dated 4th January 2017).

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#### **BOARD RESOLUTIONS NOT REQUIRED TO BE FILED IN FORM MGT-14 BY PRIVATE COMPANIES**

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Private companies are not required to file **Form MGT-14** for the following matters taken up at its Board Meetings :

<b>Section</b>	<b>Disclosure Requirements</b>
179(3)(a)	To make calls on shareholders in respect of money unpaid on their shares
179(3)(b)	To authorize buy-back of securities under section 68
179(3)(c)	To issue securities, including debentures, whether in or outside India. (In case of shares, issue of security means issue of Letter of Offer).
179(3)(d)	To borrow monies. (Borrow Money from any sources including Director)
179(3)(e)	To invest the funds of the company
179(3)(f)	To grant loans or give guarantee or provide security in respect of loans. (Also follow provisions of Section 186)
179(3)(g)	To approve financial statements and Board’s Report

179(3)(h)	To diversify the business of the company
179(3)(i)	To approve Amalgamation, Merger or Reconstruction
179(3)(j)	Take over a company or acquire a controlling or substantial stake in another company.
179(3)(k)	Any other matter which may be prescribed
Rule 8(1) of Companies (Meetings of Board and its Powers) Rules, 2014	To make political contributions
Rule 8(2) of Companies (Meetings of Board and its Powers) Rules, 2014	To appoint or remove Key Managerial Personnel (KMP)
Rule 8(4) of Companies (Meetings of Board and its Powers) Rules, 2014	To appoint Internal Auditors and Secretarial Auditor

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#### **PROCEDURE TO CONDUCT GENERAL MEETINGS**

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##### **Annual General Meeting**

- According to Section 96(1) of the Companies Act, 2013, a meeting known as an annual general meeting is required to be held by every company other than 'One Person Company' every year.
- The company shall specify the meeting as such in the notices calling Annual General Meeting.
- In case of the first annual general meeting, it shall be held within a period of 9 months from the date of closing of the first financial year of the company. If a company holds its first annual general meeting as aforesaid, it shall not be necessary for the company to hold any annual general meeting in the year of its incorporation.
- This means, for a company incorporated on 1st day of January, 2015, the first financial year shall be closed on 31st day of March, 2016 and Annual General Meeting should be convened on or before 31st day of December, 2016. However for a company incorporated on 31st day of December, 2014, the first financial year shall be closed on 31 st day of March, 2015 and Annual General Meeting should be convened on or before 31st day of December, 2015.

- In any case other than first annual general meeting, it shall be held within a period of 6 months, from the date of closing of the financial year. Not more than 15 months shall elapse between the date of one annual general meeting of a company and that of the next.
- Every annual general meeting shall be called during business hours, that is, between 9 a.m. and 6 p.m. on any day that is not a National Holiday and shall be held either at the registered office of the company or at some other place within the city, town or village in which the registered office of the company is situate.
- Companies (Amendment) Bill, 2016, provides that annual general meeting of an unlisted company may be held at any place in India if consent is given in writing or by electronic mode by all the members in advance;
- Companies (Amendment) Bill, 2016, also provides that an extraordinary general meeting of the company, other than of the wholly owned subsidiary of a company incorporated outside India, shall be held at a place within India. This means that an extraordinary general meeting of the wholly owned subsidiary of a company incorporated outside India may be held at place outside India;
- Company is required to comply with the Secretarial Standard-2 on General Meetings as issued by ICSI.
- SS-2 is not applicable to One Person Company. In case of Specified IFSC Private Company, sub-section (10) of section 118 shall not apply. –(Refer Notification No. G.S.R. 9(E) Dated 4th January, 2017). Accordingly, SS-2 is not applicable to such companies also.
- Company is required to comply with the provisions relating to notice, quorum, chairman, proxies, voting by show of hands while convening and conducting general meeting.
- MCA vide its notification no. G.S.R. 464(E) dated June 5, 2015, has given the following relaxation to the private companies with respect to conduct of general meetings:

Section 101 to Section 107 and Section 109 shall apply unless otherwise specified in respective sections or the articles of the company provide otherwise. That means Articles of Association of a Private Company can have specific provisions with respect to - notice of the general meeting (Section 101); Statement to be annexed to notice (Section 102); Quorum for meetings (Section 103); Chairman of meetings (Section 104); proxies (Section 105); restriction on voting rights (Section 106); Voting by show of hands (Section 107); Demand for poll (Section 109).

**Extra-ordinary general meetings (EGM)**

- Relevant provision is section 100.
- EGM may be called at anytime whenever the Board deems fit.
- EGM on the request of requisitionists – The Board shall, at the requisition made by the following call an EGM –
  - o in the case of a company having a share capital, such number of members who hold, on the date of the receipt of the requisition, not less than one-tenth of such of the paid-up share capital of the company as on that date carries the right of voting;
  - o in the case of a company not having a share capital, such number of members who have, on the date of receipt of the requisition, not less than one-tenth of the total voting power of all the members having on the said date a right to vote.
- The requisition to call an extraordinary general meeting shall set out the matters for the consideration of which the meeting is to be called and shall be signed by the requisitionists and sent to the registered office of the company.
- The Board shall call the meeting within 21 days from the date of receipt of a valid requisition.
- If the Board does not, within 21 days from the date of receipt of a valid requisition in regard to any matter, proceed to call a meeting for the consideration of that matter on a day not later than forty-five days from the date of receipt of such requisition, the meeting may be called and held by the requisitionists themselves within a period of three months from the date of the requisition.
- A meeting by the requisitionists shall be called and held in the same manner in which the meeting is called and held by the Board.
- Any reasonable expenses incurred by the requisitionists in calling a meeting shall be reimbursed to the requisitionists by the company and the sums so paid shall be deducted from any fee or other remuneration under section 197 payable to such of the directors who were in default in calling the meeting.
- In case of Specified IFSC Private Company - In sub-section (1) of section 100, the following proviso shall be inserted, namely :
- "Provided that in case of a Specified IFSC private company, the Board may subject to the consent of all the shareholders, convene its extraordinary

general meeting at any place within or outside India.” - Notification No. G.S.R. 9(E) Dated 4th January, 2017.

- Companies (Amendment) Bill, 2016, proposes to insert the following proviso to Section 100(1):
- Provided that an extraordinary general meeting of the company, other than of the wholly owned subsidiary of a company incorporated outside India, shall be held at a place within India.”
- This means that an extraordinary general meeting of the wholly owned subsidiary of a company incorporated outside India may be held at place outside India.

#### **FILING OF ANNUAL RETURN (Section 92)**

- Every company to prepare a return (hereinafter referred to as the annual return) in the prescribed form containing the particulars as they stood on the close of the financial year regarding –
  - (a) its registered office, principal business activities, particulars of its holding, subsidiary and associate companies;
  - (b) its shares, debentures and other securities and shareholding pattern;
  - (c) its indebtedness;
  - (d) its members and debenture-holders along with changes therein since the close of the previous financial year;
  - (e) its promoters, directors, key managerial personnel along with changes therein since the close of the previous financial year;
  - (f) meetings of members or a class thereof, Board and its various committees along with attendance details;
  - (g) remuneration of directors and key managerial personnel;
  - (h) penalty or punishment imposed on the company, its directors or officers and details of compounding of offences and appeals made against such penalty or punishment;
  - (i) matters relating to certification of compliances, disclosures as may be prescribed;
  - (j) details, as may be prescribed, in respect of shares held by or on behalf of the Foreign Institutional Investors indicating their names, addresses, countries of incorporation, registration and percentage of shareholding held by them; and
  - (k) such other matters as may be prescribed,

- Annual return shall be signed by a director and the company secretary, or where there is no company secretary, by a company secretary in practice.
- In case of One Person Company and Small Company, the annual return shall be signed by the company secretary of the company, or where there is no Company Secretary, by the director of the company. It means that the annual return of One Person Company and small company need not be signed by a company secretary in practice.

[In this regard also refer MCA Notification dated 13th June, 2017, which amends the previous exemption notification for private companies dated 5th June, 2015, – Page No. 41]

- **Form MGT-8** – The annual return, filed by a listed company or a company having paid-up share capital of ten crore rupees or more or turnover of fifty crore rupees or more, shall be certified by a Company Secretary in practice and the certificate shall be in Form No.MGT.8, stating that the annual return discloses the facts correctly and adequately and that the company has complied with all the provisions of the Companies Act, 2013.
- **Form MGT-9** – Extract of the Annual Return to be attached with Board's Report.
- Section 92(6) of the Act provides that if a company secretary in practice certifies the annual return otherwise than in conformity with the requirements of this section or the rules made thereunder, he shall be punishable with fine which shall not be less than Rs. 50,000 rupees but which may extend to Rs. 5 Lakh . Thus, concerned company secretary in practice shall remain vigilant while certifying the annual return of the companies.

#### **Annual Return – e-forms**

- **MGT-7** - Form for filing annual return by a company. To be filed with the Registrar of Companies within 60 days from the date on which the annual general meeting is held or should have been held.
- **MGT-8** - The annual return, filed by a listed company or a company having paid-up share capital of Rs. 10 crore or more or turnover of Rs. 50 crore or more, shall be certified by a Company Secretary in practice and the certificate shall be in Form No.MGT.8.
- **MGT-9** - Extract of the Annual Return to be attached with Board's Report.

## DECLARATION AND PAYMENT OF DIVIDEND

### Relevant Sections and Rules

Sections 123 to 127 read with the Companies (Declaration and Payment of Dividend) Rules, 2014.

The Investor Education and Protection Fund Authority (Accounting, Audit, Transfer and Refund) Rules, 2016 (Applicable w.e.f. 7<sup>th</sup> September, 2016).

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### Meaning of Dividend

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Section 2(35) provides that "dividend" includes any interim dividend.

It is an inclusive and not an exhaustive definition. According to the generally accepted definition, "dividend" means the profit of a company, which is not retained in the business and is distributed among the shareholders in proportion to the amount paid-up on the shares held by them.

Dividends are usually payable for a financial year after the final accounts are ready and the amount of distributable profits is available.

Dividend for a financial year of the company (which is called 'final dividend') are payable only if it is declared by the company at its annual general meeting on the recommendation of the Board of directors. Sometimes dividends are also paid by the Board of directors between two annual general meetings without declaring them at an annual general meeting (which is called 'interim dividend').

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### Important points to be considered for Declaration and Payment of Dividend

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- Before the declaration of any dividend in any financial year, a company may transfer such percentage of its profits for that financial year as it may consider appropriate to the reserves of the company.
- Clause 82(i) – Table F of Schedule I provides that the reserves, at the discretion of board, be applicable for any purpose to which the profits of the company may be properly applied, including provision for meeting

contingencies or for equalizing dividends; and pending such application, may, at the like discretion, either be employed in the business of the company or be invested in such investments (other than shares of the company) as the board may, think fit.

- Dividend may be paid out of the following (Section 123)
  - out of free reserves only.
  - Out of the profits of the company (current year) after providing for depreciation (Such depreciation shall be calculated in accordance with Schedule II); or
  - Out of the profits of the company (undistributed) for any previous financial year or years after providing for depreciation; or
  - Out of both of the above mentioned;
  - Out of money provided by Central Government/State Government for the payment of dividend in pursuance of a guarantee given by that Government
- A company shall not declare dividend unless carried over previous losses and depreciation not provided in previous year or years are set off against profit of the company for the current year. [Last proviso to section 123(1)]
- In the event of inadequacy or absence of profits in any year, a company may declare dividend out of accumulated profits earned by it in previous years and transferred by the company to the reserves subject to the fulfillment of the following conditions, namely :
  - (1) The rate of dividend declared shall not exceed the average of the rates at which dividend was declared by it in the 3 years immediately preceding that year. (It shall not apply to a company which has not declared any dividend in each of the 3 preceding financial years).
  - (2) The total amount to be drawn from such accumulated profits shall not exceed 1/10<sup>th</sup> of the sum of its paid-up share capital and free reserves (as per latest audited financial statement).
  - (3) The amount so drawn shall first be utilised to set off the losses incurred in the financial year in which dividend is declared before any dividend in respect of equity shares is declared.
  - (4) The balance of reserves after such withdrawal shall not fall below 15% of its paid up share capital (as per latest audited financial statement); (Rule 3 of the Companies (Declaration and Payment of Dividend) Rules, 2014)

- A company may, if so authorised by its articles, pay dividends in proportion to the amount paid-up on each share (Section 51);
- The dividend so declared not to exceed the amount recommended by the Board (Clause 80 - Table F of Schedule – I)

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**Steps involved in declaration of Interim Dividend**

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- Board may from time to time pay to the members such interim dividend as appear to it to be justified by the profits of the company (Clause 81- Table F of Schedule-I);
- Board may declare interim dividend during any financial year-
  - o out of the surplus in the profit and loss account and
  - o out of profits of the financial year in which such interim dividend is sought to be declared.

However, in case the company has incurred loss during the current financial year up to the end of the quarter immediately preceding the date of declaration of interim dividend, such interim dividend shall not be declared at a rate higher than the average dividends declared by the company during the immediately preceding 3 financial years. [Section 123(3)]

The Companies Amendment Bill, 2016 proposes to allow declaration of interim dividend at any time during the period from closure of financial year till holding of the annual general meeting. Such dividend may be declared out of surplus in the profit and loss account or out of the profits of the financial year in which such interim dividend is sought to be declared or out of profits generated in the financial year till the quarter preceding the date of declaration of the interim dividend.

- Notice of Dividend that may have been declared shall be given to the persons entitled to share therein in the manner mentioned in the Act (Clause 87- Table F of Schedule-I);
- Board to approve declaration of interim dividend;
- The amount of interim dividend to be deposited in scheduled bank in a separate account within 5 days from the date of declaration of such dividend [Section 123(4)].

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**Steps involved in declaration of Final Dividend**

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- Board to recommend the amount of dividend for declaration for approval at general meeting;

- A company to declare dividend by passing an Ordinary Resolution in General Meeting;
- Notice of Dividend that may have been declared shall be given to the persons entitled to share therein in the manner mentioned in the Act (Clause 87- Table F of Schedule-I);
- The amount of dividend to be deposited in scheduled bank in a separate account within 5 days from the date of declaration of such dividend [Section 123(4)];
- Dividend to be paid to registered shareholder or to his order or to his banker within 30 days from the date of declaration;
- Dividend shall always be in cash and not in kind. Any dividend payable in cash may be paid by cheque or warrant sent through post or electronic mode;
- Company may capitalise profits or reserves for the purpose of issuing fully paid-up bonus shares or paying up any amount for the time being unpaid on any shares held by the members of the company [Section 123 (5)];
- A company which fails to comply with the provisions of sections 73 and 74 shall not declare any dividend on its equity shares so long as such failure continues.

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**Steps involved in transfer of unpaid or unclaimed dividend to Unpaid Dividend Account (Section 124)**

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A special account is to be opened by the company in any scheduled bank to be called the **“Unpaid Dividend Account”** for transfer of unpaid or unclaimed dividend.

“Fund” means the Investor Education and Protection Fund (IEPF) constituted under section 125 of the Act.

- Company to transfer the unpaid or unclaimed Dividend to a special account named “Unpaid dividend Account” within 7 days after expiry of the period of 30 days of declaration of dividend. (in case of default, to pay interest @ 12% p.a.)
- Within 90 days of making any transfer of an amount to the Unpaid Dividend Account, to prepare a statement which shall contain the following:
  - the names;
  - their last known addresses; and
  - the unpaid dividend to be paid to each person.

- To place statement on the website of the company, if any, and also on any other website approved by the Central Government for this purpose. This statement shall be in the **IEPF Form 2**.
- The money along with interest, which remains unpaid or unclaimed for a period of 7 years from the date of transfer to unpaid dividend account shall be transferred to IEPF within a period of 30 days of such amounts becoming due to be credited to the Fund;
- Company to file a statement of the details of such transfer to the IEPF Authority in **IEPF Form-1** and the authority shall issue a receipt to the company as evidence of such transfer [Rule 5 of Investor Education and Protection Fund Authority (Accounting, Audit, Transfer and Refund) Rules, 2016 read with Section 124(5)].
- Any person whose shares, unclaimed dividend, matured deposits, matured debentures, application money due for refund, or interest thereon, sale proceeds of fractional shares, redemption proceeds of preference shares etc., has been transferred to the Fund, may claim the shares from or apply for refund, to the Authority by submitting an online application in **Form IEPF-5** along with fee. [Rule 7 of Investor Education and Protection Fund Authority (Accounting, Audit, Transfer and Refund) Rules, 2016]

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#### **Steps involved and manner of transfer of shares [Section 124(6) and Rule 6]**

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- All shares in respect of which dividend has not been paid or claimed for 7 consecutive years or more shall be transferred by the company to IEPF along with a statement in **IEPF Form-4**.
- The shares shall be credited to DEMAT Account of the Authority to be opened by the Authority for the said purpose, within a period of 30 days of such shares becoming due to be transferred to the Fund.

However, in case the beneficial owner has encashed any dividend warrant during the last seven years, such shares shall not be required to be transferred to the Fund even though some dividend warrants may not have been encashed.

- Board to authorise the Company Secretary or any other person to sign the necessary documents for effecting transfer of such shares.
- The company to follow the following procedure while transferring the shares :
  - a) company to inform the shareholder concerned regarding transfer of shares 3 months before the due date of transfer of shares and

also simultaneously publish a notice in the leading newspaper in English and regional language informing the concerned that the names of such shareholders and their folio number or DP ID - Client ID are available on their website duly mentioning the website address.

- b) Where there is a specific order of Court/Tribunal/statutory Authority restraining any transfer of such shares and payment of dividend or where such shares are pledged or hypothecated or shares already been transferred under sub-rule (1) above, the company shall not transfer such shares to the Fund and the company to furnish details of such shares and unpaid dividend to the Authority in **IEPF Form-3** within 30 days from the end of financial year.
- c) For effecting transfer of shares that are dealt with in a depository (in dematerialized form) –
  - Company Secretary or the person authorised by the Board shall sign on behalf of the shareholders, the delivery instructions slips of the depository participants where the shareholders had their accounts for transfer in favour of IEPF Suspense Account (Name of the Company);
  - on receipt of such delivery instructions slips, the depository shall effect the transfer of shares in favour of IEPF in its records;
- d) For effecting transfer of shares that are held in physical form –
  - Company Secretary or the person authorised by the Board shall make an application, on behalf of the concerned shareholders, to the company, for issue of duplicate share certificates;
  - On receipt of such application, a duplicate certificate for **each such shareholder** shall be issued. It shall be stated on the face of it and be recorded in the register maintained for that purpose, that the duplicate certificate is "Issued in lieu of share certificate No..... for purpose of transfer to IEPF" and the word "**duplicate**" shall be stamped or punched in bold letters on the first page of the share certificate;
  - Particulars of every share certificate issued shall be entered forthwith in a register of renewed and duplicate share certificates maintained in **Form No. SH-2**;
  - After this, the Company Secretary or the person authorised by

the Board shall sign the necessary **Form SH-4** on behalf of the shareholders for transferring the shares in favour of the fund;

- On receipt of the duly filled in **Form SH-4** and the duplicate share certificates, the Board or its committee shall transfer the shares in favour of the fund.
  - After issue of duplicate share certificates, company to inform the depository by way of corporate action to convert the duplicate share certificates into DEMAT form and transfer in favour of the Authority.
  - *Note:* As per Circular No. 07/2017 dated 5<sup>th</sup> June, 2017, it has been stated that since transfer of shares to IEPF under section 124 (6) of the Companies Act, 2013 read with rule 6(3)(d) takes place on account of operation of law, hence the procedure followed during transmission of shares may be followed in such cases and duplicate shares need not be issued in such cases.
- Company to make such transfers through corporate action and preserve copies for its records;
  - Company to send a statement to the Authority in **IEPF Form-4** containing details of such transfer;
  - Voting rights on shares transferred to remain frozen until the rightful owner claims the shares by making an application to the Authority;
- However, for the purpose of the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011, the shares which have been transferred to the Authority shall not be excluded while calculating the total voting rights.
- Company shall maintain the details of shareholding of each individual shareholders whose shares have been credited to EPF Suspense Account (Name of the Company);
  - All benefits accruing on such shares e.g., bonus shares, split, consolidation, fraction shares etc., except right issue also to be credited to such EPF Suspense Account (Name of the Company);
  - Shares held in such account shall not be transferred or dealt with in any manner except for the purposes of transferring the shares back to the claimant as and when he approaches the Authority;
  - If the company is getting delisted, the Authority shall surrender shares on behalf of the shareholders and the proceeds realised shall be credited to

the Fund and a separate ledger account shall be maintained for such proceeds.

- In case the company is being wound up, the Authority may surrender the shares on behalf of the shareholder and proceeds realised shall be credited to the Fund and a separate ledger account shall be maintained for such proceeds.
- Any further dividend received on such shares shall be credited to the fund and a separate ledger account shall be maintained for such proceeds.

CHAPTER IX

**ACCOUNTS OF COMPANIES**

**DISCLOSURES IN BOARD'S REPORT UNDER THE COMPANIES ACT, 2013**

**Board's Report – Section 134 read with** Rule 8 of Companies (Accounts) Rules, 2014

There shall be attached to financial statement, a report by the Board of Directors. Board's Report shall be prepared based on the Standalone Financial Statements of the company. Board's Report shall report on the Highlights of Performance of Subsidiaries, Associates and Joint Venture Companies and their Contribution to the overall performance of the company during the period under report.

<b>Section</b>	<b>Contents of and attachments with Board's Report</b>
<b>134(3)(a)</b>	The extract of the annual return as provided under sub-section (3) of section 92, in Form MGT-9  The Companies (Amendment) Bill, 2016, proposes to substitute the existing clause (a) with the following clause –  “(a) the web address, if any, where annual return referred to in sub-section (3) of section 92 has been placed”
<b>134(3)(b)</b>	Number of meetings of the Board;  <b>Disclosure requirement as per Secretarial Standard-I issued by ICSI:</b> number of meetings of Board and Committees held during the year, indicating number of meetings attended by each director
<b>134(3)(c)</b>	Directors' Responsibility Statement as mentioned in section 134(5)
<b>134(3)(c a) and Rule 13 (4) of the Companies</b>	Details in respect of frauds reported by auditors under sub-section (12) of section 143, other than those which are reportable to the Central Government.

<b>(Audit and Auditor's) Rules, 2014</b>	The following details of each fraud reported by Auditor to the Board shall be disclosed: Nature of Fraud with descriptions; Approximate amount involved; and Parties Involved, if remedial action not taken; and Remedial action taken
<b>134(3)(f)</b>	Explanations or comments by the Board on every qualification, reservation or adverse remark or disclaimer made-  (i) by the auditor in his report; and
<b>134(3)(g)</b>	Particulars of loans, guarantees or investments under section 186
<b>134(3)(h)</b>	Particulars of contracts or arrangements with related parties referred to in section 188(1) in Form AOC 2  As per section 188(2), every contract or arrangement entered into under section 188(1), shall be referred in Board's Report to the shareholders along with the justification for entering into such contract or arrangement.
<b>134(3)(i)</b>	The state of the company's affairs
<b>134(3)(j)</b>	The amounts, if any, which it proposes to carry to any reserves
<b>134(3)(k)</b>	The amount, if any, which it recommends should be paid by way of dividend
<b>134(3)(l)</b>	Material changes and commitments, if any, affecting the financial position of the company which have occurred between the end of the financial year of the company to which the financial statements relate and the date of the report.
<b>134(3)(m)</b>	The conservation of energy, technology absorption, foreign exchange earnings and outgo, in such manner as may be prescribed [see Rule 8(3) of the Companies (Accounts) Rules, 2014].
<b>134(3)(n)</b>	A statement indicating development and implementation of a risk management policy for the company including identification therein of elements of risk, if any, which in the opinion of the Board may threaten the existence of the company.
<b>134(3)(o)</b>	Details about the policy developed and implemented by the

	<p>company on corporate social responsibility initiatives taken during the year. It shall be as per annexure attached to the Companies (Corporate Social Responsibility Policy) Rules, 2014.</p> <p>If the Company fails to spend such amount, the Board's Report shall specify the reasons for not spending the amount. (Refer Section 135(4))</p>
<b>197(14)</b>	Any director who is in receipt of any commission from the company, and who is a managing or whole-time director of the company, shall not be disqualified from receiving any remuneration or commission from any holding or subsidiary company of such company subject to its disclosure by the company in the Board's Report.
Rule 5(2) & (3) of The Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014)	Statement showing the name of every employee of the Company, who was in receipt of remuneration beyond the stipulated limit. (Amendment - Refer the Notification dated 30th June 2016 - Companies (Appointment and Remuneration of Managerial Personnel) Amendment Rules, 2016.)
<b>131(1)</b>	Revision of Financial Statement or Board's Report (on an Order made by Tribunal upon application of company): detailed reasons for revision of financial statement or Board's Report shall be disclosed in the financial year in which such revision is being made.
<b>Disclosure under companies (Share capital and Debentures) Rules, 2014</b>	<p>Disclose in the Board's Report,</p> <p>details as prescribed in Rule 4(4), for the financial year in which the issue of equity shares with differential rights was completed;</p> <p>details as prescribed in Rule 8(13), for the year in which sweat equity shares were issued;</p> <p>details as prescribed in Rule 12(9), for the year in respect of Employees Stock Option Scheme;</p> <p>details as prescribed in Rule 16(4), for the relevant financial year, in respect of the voting right not exercised directly by the employees, in respect of shares for which scheme relates.</p>

	(provision of money by company for purchase of its own shares by employees or by trustees for the benefit of employees)
<b>Rule 8(5) of the Companies (Accounts) Rules, 2014</b>	<p>financial summary or highlights;  change in the nature of business, if any;  details of directors or key managerial personnel who were appointed or have resigned during the year;  names of companies which have become or ceased to be its subsidiaries, joint ventures or associate companies during the year;</p> <p>details relating to deposits, covered under Chapter V of the Act,</p> <ul style="list-style-type: none"> <li>– accepted during the year;</li> <li>– remained unpaid or unclaimed as at the end of the year;</li> <li>– whether there has been any default in repayment of deposits or payment of interest thereon during the year and if so, number of such cases and the total amount involved- <ul style="list-style-type: none"> <li>(i) at the beginning of the year;</li> <li>(ii) maximum during the year;</li> <li>(iii) at the end of the year;</li> </ul> </li> </ul> <p>details of deposits which are not in compliance with the requirements of Chapter V of the Act;</p> <p>the details of significant and material orders passed by the regulators or courts or tribunals impacting the going concern status and company's operations in future;</p> <p>details in respect of adequacy of internal financial controls with reference to the Financial Statements.</p>
Section 22 and 28 of The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013)	DISCLOSURE UNDER THE SEXUAL HARASSMENT OF WOMEN AT WORKPLACE (PREVENTION, PROHIBITION AND REDRESSAL) ACT, 2013. (Applicable to companies having 10 or more employees)

In case of Specified IFSC Private Company - In case of a Specified IFSC private company, if any information listed in Section 134 (3) is provided in the financial statement, the company may not include such information in the report of the Board of Directors- As per the Notification No. G.S.R. 9(E) dated 4th January, 2017.

Section 134(4) - In case of One Person Company, Board's report under section 134 means a report containing explanations or comments by the Board on every qualification, reservation or adverse remark or disclaimer made by the auditor in his report.

#### **Important compliances under Chapter IX of Companies Act, 2013**

- Company to prepare and keep at its registered office books of account and other relevant books and papers.
- These may be kept at such other place in India as Board of directors may decide subject to informing Registrar within 7 days in Form AOC-5.
- Books of Account of every company relating to a period of not less than 8 financial years immediately preceding a financial year, or where the company has been in existence for a period of less than 8 years, in respect of all the preceding years are required to be kept in good order.
- In case a company has one or more subsidiaries, it shall, in addition to financial statements, prepare a consolidated financial statement of the company and of all the subsidiaries in the same form and manner as that of its own which shall also be laid before the annual general meeting of the company along with the laying of its financial statement
- Every company having a subsidiary or subsidiaries shall-
  - (a) place separate audited accounts in respect of each of its subsidiary on its website, if any;
  - (b) provide a copy of separate audited financial statements in respect of each of its subsidiary, to any shareholder of the company who asks for it
- The Company shall also attach along with its financial statement, a separate statement containing the salient features of the financial statement of its subsidiary or subsidiaries in Form AOC-1.
- Financial statement including consolidated financial statement, if any, to be approved by the Board of directors before they are signed on behalf of the Board.

- Financial statement are signed on behalf of the Board at least by the chairperson of the company where he is authorised by the Board or by two directors out of which one shall be managing director and the Chief Executive Officer, if he is a director in the company, the Chief Financial Officer and the company secretary of the company, wherever they are appointed, or in the case of a One Person Company, only by one director, for submission to the auditor for his report thereon.

Companies (Amendment) Bill, 2016, proposes to substitute section 134(1) as under :

“(1) The financial statement, including consolidated financial statement, if any, shall be approved by the Board of Directors before they are signed on behalf of the Board by the chairperson of the company where he is authorised by the Board or by two directors out of which one shall be managing director, if any, and the Chief Executive Officer, the Chief Financial Officer and the company secretary of the company, wherever they are appointed, or in the case of One Person Company, only by one director, for submission to the auditor for his report thereon.”

- There shall be attached to statements laid before a company in general meeting, a report by its Board of Directors, which shall include –
  - a) the extract of the annual return as provided under sub-section (3) of section 92;
  - b) number of meetings of the Board;
  - c) Directors’ Responsibility Statement;
  - ca) details in respect of frauds reported by auditors under sub-section (12) of section 143 other than those which are reportable to the Central Government;
  - f) explanations or comments by the Board on every qualification, reservation or adverse remark or disclaimer made –
    - i. by the auditor in his report; and
  - g) particulars of loans, guarantees or investments under section 186;
  - h) particulars of contracts or arrangements with related parties referred to in sub-section (1) of section 188 in the prescribed form (AOC-2);
  - i) the state of the company’s affairs;
  - j) the amounts, if any, which it proposes to carry to any reserves;

- k) the amount, if any, which it recommends should be paid by way of dividend;
  - l) material changes and commitments, if any, affecting the financial position of the company which have occurred between the end of the financial year of the company to which the financial statements relate and the date of the report;
  - m) the conservation of energy, technology absorption, foreign exchange earnings and outgo, in such manner as may be prescribed;
  - n) a statement indicating development and implementation of a risk management policy for the company including identification therein of elements of risk, if any, which in the opinion of the Board may threaten the existence of the company;
  - o) the details about the policy developed and implemented by the company on corporate social responsibility initiatives taken during the year;
  - q) such other matters as may be prescribed. [Refer Rule 8 of Companies (Accounts) Rules, 2014]
- In case of private companies, it is not required to provide 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;
  - The report of the Board of Directors to be attached to the financial statement under this section shall, in case of a One Person Company, mean a report containing explanations or comments by the Board on every qualification, reservation or adverse remark or disclaimer made by the auditor in his report.
  - Vide MCA Notification No. G.S.R. 9(E) Dated 4th January, 2017, in Sub-section (3) of section 134, following proviso shall be inserted, namely:-

“Provided that in case of a Specified IFSC private company, if any information listed in this sub-section is provided in the financial statement, the company may not include such information in the report of the Board of Directors.”
  - A copy of the financial statements, including consolidated financial statements, if any, auditor’s report and every other document required by law to be annexed or attached to the financial statements, which are to be laid before a company in its general meeting, shall be sent to every member of the company, to every trustee for the debenture-holder of any

debentures issued by the company, and to all persons other than such member or trustee, being the person so entitled, not less than 21 days before the date of the meeting. [Section 101(3)]

- At every annual general meeting, the Board of Directors of company shall lay before such meeting financial statements for the financial year.
- A copy of the financial statements, including consolidated financial statement, if any, along with all the documents which are required to be or attached to such financial statements under this Act, duly adopted at the annual general meeting of the company, shall be filed with the Registrar within thirty days of the date of annual general meeting in **Form AOC-4** and the consolidated financial statements, if any, with **Form AOC-4 CFS**. [Section 137(1)]
- A One Person Company shall file a copy of the financial statements duly adopted by its member, along with all the documents which are required to be attached to such financial statements, within 180 days from the closure of the financial year. [Section 137(1)]

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#### **CHANGE IN FINANCIAL YEAR UNDER SECTION 2(41)**

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Companies Act 2013 mandates every company or body corporate to follow an uniform financial year for preparation of financial Statement.

Section 2(41) defines “financial year”, in relation to any company or body corporate, means the period ending on the 31st day of March every year, and where it has been incorporated on or after the 1st day of January of a year, the period ending on the 31st day of March of the following year, in respect whereof financial statement of the company or body corporate is made up.

A Company or body corporate which is a holding company or subsidiary of a company incorporated outside India, and is required to follow a different financial year for consideration of its accounts outside India, may apply to Tribunal for any period as its financial year.

#### **Relevant Section and Rules**

- Section 2(41) of Companies Act, 2013
- NCLT Rules, 2016

#### **Relevant Form**

**Form No. NCLT-1** together with the particulars contained in Annexure B.

The application to be filed in **Form NCLT-1**. The application shall contain the

following particulars as given in Annexure- B, namely:

- Copy of Memorandum and Articles of Association
- Copy of balance sheet of the Companies
- Affidavit verifying the petition
- Bank draft evidencing payment of application fee
- Memorandum of appearance with copy of the Board's Resolution or the executed Vakalatnama, as the case may be.

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**APPOINTMENT OF INTERNAL AUDITOR (Section 138 and Rule 13)**

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- The following class of private companies shall be required to appoint an internal auditor who shall either be a chartered accountant or a cost accountant, or such other professional as may be decided by the Board, to conduct internal audit of the functions and activities of the company, namely:-
  - Every private company having-
    - (i) Turnover of Rs . 200 crore or more during the preceding financial year; or
    - (ii) Outstanding loans or borrowings from banks or public financial institutions exceeding Rs. 100 crore or more at any point of time during the preceding financial year:
- The internal auditor may or may not be an employee of the company;
- The term "Chartered Accountant" or "Cost Accountant" shall mean a Chartered Accountant or a "Cost Accountant", as the case may be, whether engaged in practice or not.
- The 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.
- In case of Specified IFSC Private Company - Section 138 shall apply if the articles of the company provides for the same – (Refer Notification No. G.S.R. 9(E) dated 4th January, 2017)

## AUDIT AND AUDITORS

**One Person Companies, Dormant Companies, Small Companies and Private Companies having paid up share capital of less than one hundred crores rupees may appoint its auditor irrespective of the limit of 20 Audits provided u/s 141(3)(g).**

Section 141(3) prescribes the criteria for appointment as an auditor of the Company. Section 141(3) (g) states that following person shall not be eligible for appointment as an auditor:

- a. Who is in full time employment elsewhere, or
- b. Person or partner of a firm who holds at the date of appointment or reappointment, appointment as auditor of more than twenty companies.

Now the words “other than one person companies, dormant companies, small companies and private companies having paid up share capital of less than one hundred crores rupees” have been inserted after twenty companies. It implied that while calculating the limit of twenty Companies, the One Person Companies, dormant companies, and the private companies with the paid up share capital of less than Rs. 100 crore will be excluded.

This means a Private Company having paid-up share capital of less than Rs 100 crores may appoint its Auditor irrespective of the limit of holding appointment as auditor for audits of 20 companies as provided u/s 141(3) (g).

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### APPOINTMENT OF AUDITORS

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#### Eligibility

- A person shall be eligible for appointment as an auditor of a company only if he is a chartered accountant;
- A firm whereof majority of partners practising in India are qualified for appointment as aforesaid may be appointed by its firm name to be auditor of a company;
- Where a firm including a limited liability partnership is appointed as an

auditor of a company, only the partners who are chartered accountants shall be authorised to act and sign on behalf of the firm;

### **Disqualifications of Auditors**

The following persons shall not be eligible for appointment as an auditor of a company, namely: –

- a) a body corporate other than a limited liability partnership registered under the Limited Liability Partnership Act, 2008;
- b) an officer or employee of the company;
- c) a person who is a partner, or who is in the employment, of an officer or employee of the company;
- d) a person who, or his relative or partner –
  - (i) is holding any security of or interest in the company or its subsidiary/ holding / associate company or a subsidiary of such holding company;  
  
However, the relative may hold security or interest in the company of face value not exceeding 1000 rupees or such sum as may be prescribed;
  - (ii) is indebted to the company, or its subsidiary/holding /associate company or a subsidiary of such holding company, in excess of such amount as may be prescribed; or
  - (iii) has given a guarantee or provided any security in connection with the indebtedness of any third person to the company, or its subsidiary/holding/ associate company or a subsidiary of such holding company, for such amount as may be prescribed;
- e) 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;
- f) a person whose relative is a director or is in the employment of the company as a director or key managerial personnel;
- g) a person who is in full time employment elsewhere or a person or a partner of a firm holding appointment as its auditor, if such persons or partner is at the date of such appointment or reappointment holding appointment as auditor of more than 20 companies other than One Person Companies, Dormant Companies, Small Companies and Private Companies having paid-up share capital less than Rs. 100 crore ;

- h) a person who has been convicted by a court of an offence involving fraud and a period of 10 years has not elapsed from the date of such conviction;
- i) any person whose subsidiary or associate company or any other form of entity, is engaged as on the date of appointment in consulting and specialised services as provided in section 144.

Where a person appointed as an auditor incurs any of the disqualifications mentioned above after the appointment, he shall vacate his office as such auditor and such vacation shall be deemed to be a casual vacancy in the office of the auditor.

#### **Remuneration of Auditors (Section 142)**

- Board may fix remuneration of the first auditor appointed by it;
- The remuneration of the auditor of a company shall be fixed in its general meeting or in such manner as may be determined therein;
- The remuneration under sub-section shall, in addition to the fee payable to an auditor, include the expenses, if any, incurred by the auditor in connection with the audit of the company and any facility extended to him but does not include any remuneration paid to him for any other service rendered by him at the request of the company.

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### **PROCEDURE FOR APPOINTMENT OF AUDITOR**

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#### **Appointment of First Auditor**

- The first auditor of a company, other than a Government company, shall be appointed by the Board within 30 days from the date of registration of the company.
- However, if the Board fails to appoint such auditor, it shall inform the members of the company and the members shall make the appointment of first auditor within 90 days of date of receipt of information at an extra ordinary general meeting and such auditor shall hold office till the conclusion of the first AGM.
- Obtain certificate in writing from the proposed auditor confirming his eligibility and consent to be appointed as auditor of the company.
- Convene a Board meeting within 30 days of registration of the company after giving notice to all directors as per section 173 of the Act and pass a resolution for appointing the first auditor and fixing his remuneration.
- Inform the first auditor so appointed with a certified copy of the resolution.

**Appointment of Auditors at Annual General Meeting**

- The Board to consider the qualification and experience of the individual or the firm proposed to be appointed as auditor and recommend him/it to the members in the AGM for appointment. [Rule 3(3)].
- While considering the appointment, the Board shall have due regard to any order or pending proceeding relating to professional misconduct passed against the proposed auditor before the Institute of Chartered Accountants of India or any competent authority or any Court.
- The members to appoint auditor of the company at the AGM.
- The auditor appointed by the members in the AGM shall hold office from the conclusion of that meeting till the conclusion of the sixth AGM, (the meeting wherein such appointment has been made being counted as the first meeting) [Rule 3 (7)]
- Such appointment shall be subject to the ratification by members at every AGM (i.e., second, third, fourth and fifth etc.) till the sixth AGM by way of passing of an ordinary resolution. [Rule 3 (7)]
- If the appointment is not ratified by the members of the company, the Board of Directors shall appoint another individual or firm as its auditor or auditors after following the procedure laid down in this behalf under the Act. [Explanation to Rule 3 (7)]
- Before such appointment, the company needs to obtain a written consent of the (proposed) auditor before such appointment and a certificate from him that the appointment, if made, shall be in accordance with the conditions prescribed under Rule 4 of Companies (Audit and Auditors) Rules, 2014, namely:
  - a) The individual or firm is eligible for appointment and is not disqualified for appointment under the Act, the Chartered Accountants Act, 1949 and Rules and Regulations made therein.
  - b) Proposed appointment is within the term allowed under the Act.
  - c) Proposed appointment is within the limit laid down in the Act.
  - d) list of proceedings against the auditor or audit firm or any partner of the audit firm pending with respect to professional matters of conduct, as disclosed in the certificate, is true and correct.
- The certificate should indicate whether the auditor satisfies the criteria provided in section 141 (eligibility, qualifications and disqualifications of auditors) of the Companies Act, 2013.

- The company to inform the auditor concerned of his/ its appointment, and file a notice of such appointment in **Form ADT-1** with the Registrar within 15 days of the meeting in which the auditor is appointed.
- In case of Specified IFSC Private Company- the notice of such appointment in **Form ADT-1** with the Registrar shall be filed within 30 days of the meeting in which the auditor is appointed – (Refer Notification No. G.S.R. 9(E) dated 4th January, 2017)

#### **Rotation of Auditors [Section 139(2)]**

- A company belonging to such class or classes of companies as may be prescribed, shall not appoint or re-appoint:
  - a) an individual as auditor for more than one term of five consecutive years; and
  - b) an audit firm as auditor for more than two terms of five consecutive years

Further,

- (i) an individual auditor who has completed his term under clause (a) shall not be eligible for re-appointment as auditor in the same company for five years from the completion of his term;
  - (ii) an audit firm which has completed its term under clause (b), shall not be eligible for re-appointment as auditor in the same company for five years from the completion of such term
- Audit firm having a common partner or partners to the other audit firm, whose tenure has expired in a company immediately preceding the financial year, shall not be appointed as auditor of the same company for a period of five years.
  - However, nothing contained in section 139 (2) shall prejudice the right of the company to remove an auditor or the right of the auditor to resign from such office of the company.
  - Prescribed class or classes of companies for rotation of auditors(Rule 5):

The following classes of companies excluding one person companies and small companies:-

- (a) all unlisted public companies having paid up share capital of rupees 10 crore or more;
- (b) all private limited companies having paid up share capital of rupees 20 crore or more;

- (c) all companies having paid up share capital of below threshold limit mentioned in (a) and (b) above, but having public borrowings from financial institutions, banks or public deposits of rupees 50 crores or more.

Therefore, as per Rule 5, the provisions of section 139 (2) are not applicable to a One Person Company and a Small Company.

Further, in case of Specified IFSC Private Company- All provisos to sub section (2) of section 139 shall not apply. – (Refer Notification No. G.S.R. 9(E) Dated 4th January, 2017).

**Manner of Rotation of Auditors by the Companies on Expiry of their Term (Rule 6)**

- Board to consider the matter of rotation of auditors and make its recommendation for appointment of the next auditor by the members in annual general meeting.
- In case of an auditor (whether an individual or audit firm), the period for which the individual/firm has held office as auditor prior to the commencement of the Act shall be taken into account for calculating the period of 5 / 10 consecutive years, as the case may be;
- The incoming auditor or audit firm shall not be eligible if such audit/ audit firm is associated with the outgoing auditor/audit firm under the same network of audit firms;
- A break in the term for a continuous period of 5 years shall be considered as fulfilling the requirement of rotation;
- If a partner, who is in charge of an audit firm and also certifies the financial statements of the company, retires from the said firm and joins another firm of chartered accountants, such other firm shall also be ineligible to be appointed for a period of five years;
- Where a company has appointed 2 or more individuals/firms or a combination thereof as joint auditors, the company may follow the rotation of auditors in such a manner that both or all of the joint auditors, as the case may be, do not complete their term in the same year.

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**Vacancy, Removal, Resignation of Auditor and Giving of Special Notice**

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**Casual Vacancy in the office of an Auditor [Section 139(8)]**

Any casual vacancy in the office of an auditor shall-

- in the case of a company other than a company whose accounts are

subject to audit by an auditor appointed by the Comptroller and Auditor-General of India, be filled by the Board of Directors within 30 days.

However, if such casual vacancy is as a result of the resignation of an auditor, such appointment shall also be approved by the company at a general meeting convened within 3 months of the recommendation of the Board and he shall hold the office till the conclusion of the next AGM;

- in the case of a company whose accounts are subject to audit by an auditor appointed by the Comptroller and Auditor-General of India, be filled by the Comptroller and Auditor-General of India within 30 days;

However, if the Comptroller and Auditor-General of India does not fill the vacancy within the said period, the Board of Directors shall fill the vacancy within next 30 days.

Retiring Auditor:

- A retiring auditor may be re-appointed at an AGM, if—
  - a) he is not disqualified for re-appointment;
  - b) he has not given the company a notice in writing of his unwillingness to be re-appointed; and
  - c) a special resolution has not been passed at that meeting appointing some other auditor or providing expressly that he shall not be re-appointed.
- Where at any AGM, no auditor is appointed or re-appointed, the existing auditor shall continue to be the auditor of the company.

#### **Removal of the Auditor before expiry of his term (Rule 7)**

- The company to pass a Board Resolution for removal of auditor;
- The Company to make an application to the Central Government for removal of auditor in **Form ADT-2** within 30 days of the resolution passed by the Board;
- The company to hold general meeting within 60 days of receipt of approval of the Central Government for passing the special resolution.
- In case of a Specified IFSC private company, where no decision is communicated by the Central Government within a period of 60 days from the date of submission of the application to the Central Government, it would be deemed that the Central Government has approved the application and the company shall appoint new auditor at a general

meeting convened within 3 months from the date of expiry of 60 days period. – (Refer Notification No. G.S.R. 9(E) Dated 4th January, 2017)

#### **Resignation by Auditor [Section 140(2) & Rule 8]**

- The auditor who has resigned shall file a statement in **Form ADT-3** with the company and the Registrar within a period of 30 days from the date of resignation indicating the reasons and other facts as may be relevant with regard to his resignation.

#### **Giving of Special Notice [Section 140(4)]**

- Special notice shall be required for a resolution at an AGM for:
  - a) appointing as auditor a person other than a retiring auditor, or
  - b) providing expressly that a retiring auditor shall not be re-appointed, except where the retiring auditor has completed a consecutive tenure of 5/10 years, as the case may be;
- On receipt of notice of such a resolution, the company shall forthwith send a copy thereof to the retiring auditor;
- Where notice is given of such a resolution and the retiring auditor makes a representation in writing to the company (not exceeding a reasonable length) and requests its notification to members of the company, the company shall, unless the representation is received by it too late for it to do so: –
  - a) in any notice of the resolution given to members of the company, state the fact of the representation having been made; and
  - b) send a copy of the representation to every member of the company to whom notice of the meeting is sent, whether before or after the receipt of the representation by the company;
- If a copy of the representation is not sent because it was received too late or on company's default, the auditor may require that the representation shall be read out at the meeting;
- If a copy of representation is not sent as aforesaid, a copy thereof shall be filed with the Registrar;
- If the Tribunal is satisfied on an application either of the company or of any aggrieved person that the rights conferred by Section 140(4) are being abused by the auditor, then the copies of the representation may not be sent and the representations need not be read out at the meeting.

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**COST AUDITOR**

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The provisions relating to appointment of cost auditors are dealt in Companies (Cost Record and Audit) Rules, 2014.

**Appointment**

The category of companies specified in Rule 3 and the thresholds limits laid down in Rule 4, shall within 180 days of the commencement of every financial year, appoint a cost auditor. "Cost auditor" means a Cost Accountant in practice, as defined in clause (b), who is appointed by the Board [Rule 6].

As per Rule 3 the class of companies, including foreign companies defined in clause (42) of section 2 of the Act, engaged in the production of the goods or providing services, specified in the table (refer Rule 3), having an overall turnover from all its products and services of Rs. 35 crore or more during the immediately preceding financial year, shall include cost records for such products or services in their books of account.

**Remuneration**

Rule 14 of Companies (Audit and Auditors) Rules, 2014, deals with Remuneration of the Cost Auditor. For the purpose of sub-section (3) of section 148 –

In the case of Private companies since these are not required to constitute an audit committee, the Board shall appoint an individual who is a cost accountant in practice or a firm of cost accountants in practice as cost auditor and the remuneration of such cost auditor shall be ratified by shareholders subsequently.

**Procedure for appointment of Cost Auditor (Rule 6)**

- (1) Before appointment of Cost Auditor, a written consent of the cost auditor for such appointment and a certificate from him or it, shall be obtained.
- (2) The cost auditor appointed shall submit a certificate that:
  - (a) the individual or the firm, as the case may be, is eligible for appointment and is not disqualified for appointment under the Act, the Cost and Works Accountants Act, 1959 and the rules or regulations made thereunder;
  - (b) the individual or the firm, as the case may be, satisfies the criteria provided in section 141 of the Act, so far as may be applicable;
  - (c) the proposed appointment is within the limits laid down by or under the authority of the Act; and

- (d) the list of proceedings against the cost auditor or audit firm or any partner of the audit firm pending with respect to professional matters of conduct, as disclosed in the certificate, is true and correct.
- (3) Every company shall inform the cost auditor concerned of his or its appointment as such and file a notice of such appointment with the Central Government within a period of 30 days of the Board meeting in which such appointment is made or within a period of 180 days of the commencement of the financial year, whichever is earlier, through electronic mode, in **Form CRA-2**.
- (4) On filing the application, the same shall be deemed to be approved by the Central Government, unless contrary is heard within 30 days from the date of filing of such application.
- (5) If within 30 days from the date of filing of such application, the Central Government directs the company to re-submit the said application with additional information, the period of 30 days for deemed approval of the Central Government shall be counted from the date of re-submission by the company.
- (6) After the expiry of 30 days, the company shall issue formal letter of appointment to the cost auditor.
- (7) The audit committee, if constituted by the company recommends to the Board a suitable remuneration to be paid to the cost auditor. In the case of those companies which are 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.
- (8) Every cost auditor appointed as such shall continue in such capacity till the expiry of 180 days from the closure of the financial year or till he submits the cost audit report, for the financial year for which he has been appointed.
- (9) The cost auditor appointed under these rules may be removed from his office before the expiry of his term, through a board resolution after giving a reasonable opportunity of being heard to the Cost Auditor and recording the reasons for such removal in writing.

Further, the **Form CRA-2** to be filed with the Central Government for intimating appointment of another cost auditor. Furthermore, nothing contained in these Rules shall prejudice the right of the cost auditor to resign from such office of the company.

- (10) Every cost auditor, who conducts an audit of the cost records of a company, shall submit the cost audit report along with his or its reservations or qualifications or observations or suggestions, if any, in **Form CRA- 3**.
- (11) Every cost auditor shall forward his duly signed report to the Board of Directors of the company within a period of 180 from the closure of the financial year to which the report relates and the Board of directors shall consider and examine such report, particularly any reservation or qualification contained therein.
- (12) Every company covered under these rules shall, within a period of 30 days from the date of receipt of a copy of the cost audit report, furnish to the Central Government with such report full information and explanation on every reservation or qualification contained therein, in **Form CRA-4** in Extensible Business Reporting Language format in the manner as specified in the Companies (Filing of Documents and Forms in Extensible Business Reporting Language) Rules, 2015.
- (13) The company shall disclose full particulars of the cost auditor, along with the due date and actual date of filing of the cost audit report by the cost auditor, in its Annual Report for each relevant financial year.
- (14) In those companies, where constitution of Audit Committee is not required by law, then the role of Audit Committee shall be discharged by the Board of Directors.
- (15) The provisions of section 143(12) relating to reporting of fraud and the relevant rules made thereunder shall apply mutatis mutandis to a cost auditor during performance of his functions under section 148 of the Act and these rules.

### **Casual vacancy**

Any casual vacancy in the office of a cost auditor, whether due to resignation, death or removal, shall be filled by the Board of Director within 30 days of occurrence of such vacancy and the company shall inform the Central Government in **Form CRA-2** within 30 days of such appointment.

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### **POWERS OF AUDITORS**

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- Every auditor of a company shall have a right of access at all times to the books of account and vouchers of the company, whether kept at the registered office of the company or at any other place;
- The Auditor shall be entitled to require from the officers of the company such information and explanation as he may consider necessary for the

performance of his duties as auditor and amongst other matters inquire into the following matters:

- a) whether loans and advances made by the company on the basis of security have been properly secured and whether the terms on which they have been made are prejudicial to the interests of the company or its members;
  - b) whether transactions of the company which are represented merely by book entries are prejudicial to the interests of the company;
  - c) where the company not being an investment company or a banking company, whether so much of the assets of the company as consist of shares, debentures and other securities have been sold at a price less than that at which they were purchased by the company;
  - d) whether loans and advances made by the company have been shown as deposits;
  - e) whether personal expenses have been charged to revenue account;
  - f) where it is stated in the books and documents of the company that any shares have been allotted for cash, whether cash has actually been received in respect of such allotment, and if no cash has actually been so received, whether the position as stated in the account books and the balance sheet is correct, regular and not misleading.
- The auditor of a holding company shall also have the right of access to the records of all its subsidiaries in so far as it relates to the consolidation of its financial statements with that of its subsidiaries;

#### **Auditors to Attend General Meeting**

- All notices and other communications relating to any general meeting shall be forwarded to the auditor of the company;
- The auditor shall, unless otherwise exempted by the company, attend either by himself or through his authorised representative, who shall also be qualified to be an auditor, any general meeting and shall have right to be heard at such meeting on any part of the business which concerns him as the auditor.

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#### **PROCEDURE FOR REPORTING FRAUD [Section 143(12)]**

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#### **Reporting of Frauds by Auditor and Other Matters (Rule 13 of companies (Audit and Auditors) Rules, 2014)**

- If an auditor of a company, in the course of the performance of his duties as statutory auditor, has reason to believe that an offence of fraud, which involves or is expected to involve individually an amount of rupees 1 crore or above, is being or has been committed against the company by its officers or employees, the auditor shall report the matter to the Central Government as under:-
  - a) the auditor shall report the matter to the Audit committee/ Board immediately but not later than 2 days of his knowledge of the fraud, seeking their reply or observations within 45 days;
  - b) on receipt of such reply or observations, the auditor shall forward his report and the reply or observations of the Board / Audit committee along with his comments to the Central Government within 15 days from the date of receipt of such reply or observations;
  - c) in case the auditor fails to get any reply or observations from the Board / Audit committee within 45 days, he shall forward his report to the Central Government along with a note containing the details of his report that was earlier forwarded to the Board or the Audit Committee for which he has not received any reply or observations;
- the report shall be sent to the Secretary, Ministry of Corporate Affairs in a sealed cover by Registered Post with Acknowledgement Due or by Speed Post followed by an e-mail in confirmation of the same;
- the report shall be on the letter-head of the auditor containing postal address, e-mail address and contact telephone number or mobile number and be signed by the auditor with his seal and shall indicate his Membership Number; and
- The report shall be in the form of a statement as specified in **Form ADT-4**.
- In case of a fraud involving an amount less than Rs. 1 crore, the auditor shall report the matter to the Board / Audit Committee immediately but not later than 2 days of his knowledge of the fraud and he shall report the matter specifying the following:-
  - a) Nature of Fraud with description;
  - b) Approximate amount involved; and
  - c) Parties involved.
- The following details of each of the fraud reported to the Board / the Audit Committee under during the year shall be disclosed in the Board's Report:-

- a) Nature of Fraud with description;
  - b) Approximate Amount involved;
  - c) Parties involved, if remedial action not taken; and
  - d) Remedial actions taken.
- The provision of Rule 13 shall also apply, *mutatis mutandis*, to a Cost Auditor during the performance of his duties under section 148.

CHAPTER-XI

## APPOINTMENT AND QUALIFICATIONS OF DIRECTORS

### Minimum/Maximum Number of Directors in a Company- Section 149(1)

S. No.	Type of Company	Minimum Number of Directors	Maximum Number of Directors
1.	Private Company	2	15
2.	Once Person company	1	

A company may appoint more than 15 directors after passing a special resolution in general meeting and approval of Central Government is not required.

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### Appointment of Women Director

Appointment of Woman director is not applicable to Private Company.

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 Rs. 100 crore rupees or more; or
  - (b) turnover of Rs. 300 crore rupees or more.

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### Appointment of First Directors

- At the time of incorporation, a company may name some person as first directors in the articles of the company (Section 7(1) (f) read with Section 152(1) of the Companies Act, 2013);
- Where no provision is made in the articles of a company for the appointment of the first director, the subscribers to the memorandum who is individuals shall be deemed to be the first directors of the company until the directors are duly appointed.

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**Resident Director**

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Every company shall have at least one director who has stayed in India for a total period of not less than one hundred and eighty-two days in the previous calendar year.

In case of Specified IFSC Private Company - Sub- section (3) of section 149, the following proviso shall be inserted, namely:-

“Provided that this sub-section shall apply to a Specified IFSC private company in respect of financial years other than the first financial year from the date of its incorporation.”. – (Refer Notification No. G.S.R. 9(E) Dated 4th January, 2017).

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**Independent Director- Not Applicable to Private Company**

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Every listed public company shall have at least one-third of the total number of directors as independent directors and the Central Government may prescribe the minimum number of independent directors in case of any class or classes of public companies.

The following class or classes of companies shall 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:

Accordingly, private companies are not required to have independent directors.

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**Appointment of Directors by Members at General Meeting**

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- On or before the appointment of a director, the company to get his consent to hold office as director in Form DIR – 2.
- The company shall within 30 days of appointment of a director, file such consent with the Registrar in form DIR-12.
- Every director shall be appointed by the company in general meeting. (according to Section 152)

**Exemption for Private Companies**

1. Section 160- Right of Persons Other than Retiring Directors to Stand for Directorship shall not apply.

2. Section 162- Appointment of Directors to be voted individually shall not apply.

#### **Exemption for IFSC Private Companies**

1. In sub-section (3) of Section 149, the following proviso shall be inserted, namely:- Provided that this sub-section shall apply to the Specified IFSC private company in respect of financial years other than the first financial year from the date of its incorporation.
2. In sub-section (3) of Section 161, the following proviso shall be inserted, namely:- Provided that in case of a Specified IFSC private company, the Board may appoint any person nominated by any institution or company or body corporate as a director 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. (Refer Notification Dated 4th January 2017)

#### **Compliance for re-appointment of the retiring director at the Annual General Meeting**

1. Ascertain which directors are due to retire by rotation. As a general principle, the directors to retire shall be those who have been longest in office since their last appointment.
2. Ensure that the retiring director is not subject to any disqualification for re-appointment as director of the company under sections 164 and 165 of the Companies Act, 2013.
3. Ensure that the consent of the director as well as the declaration from the director has been obtained.
4. Convene a Board meeting after giving notice to all directors of the company in accordance with Section 173 of the Act to consider the re-appointment of retiring director.
5. Fix the time, place and agenda of the annual general meeting to pass an ordinary resolution for the reappointment of retiring director.
6. Send the notice in writing at least 21 clear days before the date of annual general meeting to the members.
7. Hold the annual general meeting and pass an ordinary resolution for re-appointment of the retiring director.

(Note: In the case of re-appointment of the retiring director, no forms are required to be filed with the Registrar)

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**Appointment of Directors by Board**

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***(i) Appointment of Additional Directors***

Articles of a company may confer on its Board of Directors the power to appoint Additional Director. A person who has failed to be appointed as Director through general meeting shall not be appointed as Additional Director. An Additional Director shall hold office only up to the date of next Annual General Meeting or the last day on which the Annual General Meeting should have been held, whichever is earlier. [Section 161(1)]

However, the total number of directors and additional directors shall not exceed the maximum strength of directors fixed for the Board.

An additional director holds office only upto the date of the next annual general meeting of the company. If the annual general meeting of the company is not held or cannot be held, the person appointed as additional director vacates his office on the last day on which the annual general meeting should have been held in terms of Section 161 of the Act.

**Compliance for Appointment of Additional Director**

1. Ensure that the Articles of the company authorise the Board to appoint an additional director and such appointment is within the maximum limit of directors mentioned in the Articles.
2. Ensure that the individual proposed to be appointed as an additional director does not suffer from any disqualification.
3. The Board may, if so authorised by articles, appoint an additional director at Board meeting.
4. Before appointing a person as an additional director his consent to act as director should be obtained in Form DIR-2.
5. Check whether the additional director to be appointed in the board meeting has obtained Director Identification Number (DIN). If not, then ask such director to make an application to the Central Government for obtaining DIN and ensure that the Director has intimated his Directors Identification Number to the Company.
6. Send notice in writing to all directors of the company in accordance with Section 173 of the Companies Act, 2013 for holding Board meeting.
7. Hold the Board meeting and pass resolution for appointment of an additional director.

8. The company has to file particulars of director in **Form DIR - 12** along with his consent in **Form DIR-2** with the Registrar of Companies within 30 days of the appointment after paying the requisite fee electronically.
9. The particulars of the director and other information relating to the director have to be entered by the company in the registers maintained under Sections 170 and 189.
10. After appointment the director concerned has to inform other companies in which he is director about his appointment.
11. Ensure that said Form is digitally signed by managing director or manager or secretary of the company and also certified by a Company Secretary or chartered accountant or cost accountant in whole time practice by digitally signing it.

***(ii) Appointment of Directors to Fill Casual Vacancies***

A contingency may occur between two annual general meetings due to death, resignation, insolvency, disqualification, etc. Vacancies arising out of these reasons are called casual vacancies. In case of a private company, the procedure for appointment will be governed by its Articles.

**Procedure for appointing directors in casual vacancy**

1. Where it is proposed by the Board to appoint a person to fill a casual vacancy, his written consent to act as a director has to be obtained before appointment in Form DIR-2.
2. Check whether the director to be appointed in the casual vacancy in the board meeting has obtained Director Identification Number (DIN). If not then ask such director to make application to Central Government for obtaining DIN and ensure that the Director has intimated his Directors Identification Number to the Company.
3. Convene a Board meeting after giving notice to all the directors of the company as per Section 173. At the Board meeting the matter will be discussed and appointment may be made by passing a resolution.
4. The company has to file particulars of the director in Form DIR - 12 along with his consent in DIR-2 with the Registrar of Companies within thirty days of the appointment after paying the requisite fee electronically.
5. Ensure that the said Form is digitally signed by managing director or manager or secretary of the company and also certified by a Company Secretary or chartered accountant or cost accountant in whole time practice by digitally signing it.

6. The particulars of the director and other information relating to the director have to be entered by the company in the registers maintained under Sections 170 and 189
7. After appointment the director concerned has to inform other companies in which he is a director about his appointment.

***(iii) Appointment of Alternate Director***

Section 161(2) of the Companies Act, 2013, empowers the Board of directors of a company to appoint an alternate director, if the articles authorise. Alternate director may be appointed in place of a director during his absence for not less than three months, from India. The alternate director holds office for the period the original director is permissible to hold the office and is away from India. When the original director returns, the alternate director ceases to be a director. If the term of office of the original director comes to an end before he returns, the provisions of the Act relating to automatic re-appointment of retiring directors in default of another appointment will apply to the original director and not to the alternate one. Thus, the original and not the alternate director will be deemed to be reappointed.

**Compliance for appointment of an alternate Director**

1. Check the Articles of Association of the company to see whether the the Board is authorized to appoint an alternate director. Otherwise, either alter them accordingly or pass a resolution in company's general meeting authorizing the Board to make such appointment.
2. Where it is proposed to appoint a person as an alternate director his written consent to act as director shall be obtained in **Form DIR-2**.
3. Check whether alternate director to be appointed in board meeting has obtained Director Identification Number (DIN). If not, then ask such director to make an application to the Central Government for obtaining DIN and ensure that the Director has intimated his Directors Identification Number to the Company.
4. Convene a Board meeting after giving notice to all the directors as per section 173. The Board may approve the appointment by passing a resolution either at a Board meeting or by circulation.
5. Ensure that the consent of the director as well as the declaration from the director has been obtained.
6. The company has to file particulars of director in **Form DIR – 12** with the Registrar of Companies within thirty days of the appointment after paying the requisite fee electronically.

7. Ensure that the said Form is digitally signed by managing director or manager or secretary of the company and also certified by a CS or CA or CMA in whole-time practice by digitally signing it.
8. The said alternate director will not hold office as such for a period longer than that permissible for the original director in whose place he has been appointed and shall vacate office if and when the original director returns to India.
9. Where the alternate director vacates his office as per the section, the Board may reappoint him as an alternate director when the original director leaves India.
10. The particulars of the director and other information relating to director has to be entered by the company in the registers maintained under Sections 170 and 189.
11. After appointment the director concerned has to inform other companies in which he is a director about his appointment.

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#### **Resignation of Directors**

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1. A director may resign from his office by giving a notice with the reasons of resignation in writing to the company.
2. The Board shall, on receipt of such a notice from a director, take note of the same.
3. The company shall within 30 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 as provided in Rule 15 of the Companies (Appointment and Qualification of Directors) Rules, 2014.
4. The board shall place the facts of such resignation by the director in the Report of Directors laid in immediately following general meeting by the company.
5. The Director shall within 30 days from his resignation, forward to the registrar a copy of his resignation along with reasons for resignation in Form DIR-11 along with the fee provided.
6. The resignation shall be effective from the date on which the notice is received by the company or the date specified by the Director in the notice whichever is later.
7. When all the Directors resign at the same time the required number of directors are to be appointed by the promoter or, in his absence, by the

Central Government. The Directors so appointed shall hold office till the Directors are appointed by the company in general meeting.

### **Exemption for Private Companies**

In case of private companies, section 184(2) shall apply with the exception that the interested director may participate in such meeting after disclosure of his interest.

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### **SECTION 160 SHALL NOT APPLY**

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Section 160 deals with right of persons other than retiring directors (as per section 152) to stand for directorship subject to 14 days notice in writing before the meeting along with the deposit of rupees one lakh.

This section has been exempted for private companies. Thus persons other than retiring directors may now stand for directorships in such companies:-

- without leaving a written notice 14 days before the meeting; and
- without deposit of Rs. 1 lakh.

This is similar to Section 257 of Companies Act 1956 which was not applicable to private companies.

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### **SECTION 162 SHALL NOT APPLY**

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Section 162 deals with appointment of directors to be voted individually. Private Companies are exempted from this section and accordingly more than one director can be appointed through a single resolution.

## MEETINGS OF BOARD AND ITS POWERS

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### MEETINGS OF BOARD

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#### Relevant Sections and Rules

Section 173 to 194 of the Companies Act, 2013 read with the Companies (Meeting of Boards and its Powers) Rules, 2014 and the Companies (Management and Administration) Rules, 2014.

#### Important Points to be considered:

- Frequency of Board Meeting - Every company shall hold the 1<sup>st</sup> meeting of the Board of Directors within 30 days of the date of its incorporation and thereafter hold a minimum number of 4 meetings of its Board of Directors every year in such a manner that not more than 120 days shall intervene between 2 consecutive meetings of the Board. [Section 173(1)] There shall be at least one board meeting in every calendar quarter (SS-1-Para 2.1)
- OPC, small company is required to hold at least one meeting in each half of a calendar year with a gap of not less than 90 days. [Section 173(5)]

However, section 173(5) & 174 relating to Meeting of Board and Quorum for Meetings of Board respectively shall not apply to One Person Company in which there is only one director on its Board of Directors.

[In this regard also refer MCA Notification dated 13th June, 2017, which amends the previous exemption notification for private companies dated 5th June, 2015, – Page No. 41]

- Participation of directors in a meeting may be either in person or through video conferencing or other audio visual means, as may be prescribed, which are capable of recording and storing the proceedings of such meetings. [Section 173(2) & SS-1 – para 1.2.3]

However, Central Government may specify such matters which shall not be dealt with in a meeting through video conferencing or other audio visual means. Rule 4 of the Companies (Meeting of Board and its Powers)

Rules, 2014 specifies the matters not to be dealt with in a meeting through video conferencing or other audio visual means which are as follows:

- (i) Approval of the annual financial statements;
- (ii) Approval of the Board's report;
- (iii) Approval of the prospectus;
- (iv) 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; and
- (v) Approval of the matter relating to amalgamation, merger, demerger, acquisition and takeover.

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### **CONVENING BOARD MEETINGS**

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#### **Procedure to be followed for convening a Meeting of the Board:**

- Meeting to be convened by the authorised person. Any Director may summon a Meeting of the Board, and the CS or where there is no CS, any person authorised by the Board in this behalf, on the requisition of a Director, shall convene a Meeting of the Board, in consultation with the Chairman or in his absence, the Managing Director or in his absence, the Whole-time Director, where there is any, unless otherwise provided in the Articles. [SS-1 – para 1.1.1]
- Every Meeting shall have a serial number. [SS-1 - para 1.2.1]
- Meeting may be convened at any time and place, on any day, excluding a National Holiday. [SS-1 - para 1.2.2]

#### **NOTICE**

- Notice of the Meeting (original/adjourned) to be given at least 7 days' before the meeting in writing to every director at his registered address by hand delivery/post/electronic means. [Section 173(3) & SS-1 – para 1.3.1]
- Meeting may be called at shorter notice to transact urgent business subject to the condition that at least 1 independent director, if any, shall be present at the meeting. In case the company does not have an Independent Director, the decisions taken shall be circulated to all the directors and shall be final only on ratification thereof by a majority of the Directors of the company, unless such decisions were approved at the Meeting itself by a majority of Directors of the company. [Section 173(3) & SS-1 – para 1.3.1]

- Notice to be issued by the CS or in his absence, by a Director or by person authorised by the Board in this behalf [SS-1 – para 1.3.2]
- Where facility of participation through electronic mode is provided, the Notice shall inform the directors about the availability of such facility and seek advance confirmation from the Directors as to whether they will participate through Electronic Mode in the Meeting and provide them necessary information to avail such facility. [SS-1 – para 1.3.4]

#### **AGENDA & NOTES THEREON**

- The Agenda, setting out the business to be transacted at the Meeting and Notes on Agenda shall be given to the Directors at least 7 days before the date of the Meeting, unless the Articles prescribe a longer period. [SS-1 - para 1.3.7]

#### **QUORUM**

- Quorum for a Meeting of the Board shall be 1/3<sup>rd</sup> (fraction rounded off as one) of its total strength or 2 directors whichever is higher. Participation of the directors by video conferencing or by other audio visual means to be counted for the purposes of quorum unless they are to be excluded for any items of business under the provisions of the Act or any other law. [Section 174 (1) read with SS-1 – para 3.3]
- Quorum shall be present throughout the Meeting [SS-1 – para 3.1]
- If the number of interested directors exceeds or is equal to 2/3<sup>rd</sup> of the total strength of the Board of Directors, then non-interested directors and present at the meeting, being not less than 2, shall be the quorum. [Section 174(3)]

[In this regard also refer MCA Notification dated 13th June, 2017, which amends the previous exemption notification for private companies dated 5th June, 2015, – Page No. 41]

- Where a meeting of the Board could not be held for want of quorum, (then unless the articles provide otherwise), the meeting shall automatically stand adjourned to the same day, 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. [Section 174(4)]

#### **CHAIRMAN**

- The Chairman of the company shall be the Chairman of the Board. If the company does not have a chairman, the Directors may elect one of themselves to be the Chairman of the Board. [SS-1 – para 5.1.1]

**RESOLUTIONS BY CIRCULATION**

- Section 175 provides that the resolution shall be deemed to have been duly passed by the Board thereof by circulation, only if:
  - resolution is circulated in draft, together with the necessary papers, if any
  - to all the directors,
  - at their addresses registered with the company in India,
  - sent by hand delivery or by post or electronic means which may include E-mail or fax (Rule 5),
  - approved by a majority of the directors who are entitled to vote on the resolution.
- Such resolution shall be noted at a subsequent meeting of the Board and made part of the minutes of such meeting. [Section 175(2)]
- Every such resolution shall carry a serial number [SS-1 – para 6.3.1]

**MINUTES**

- Every company shall keep Minutes of all Board Meetings in a Minutes Book. [Rule 25 of the Companies (Management and Administration) Rules, 2014 read with SS-1 - para 7.1.2]
- [Section 118] Minutes shall contain a correct and fair summary of the proceedings and shall also contain—
  - (a) the names of the directors present at the meeting; and
  - (b) in the case of each resolution passed at the meeting, the names of the directors, if any, dissenting from, or not concurring with the resolution.
- The Minutes of the Board Meetings shall be entered in the minutes books along with the date of such entry within 30 days of the conclusion of the Meeting and each page of such book shall be initialled or signed and the last page of the record of proceedings of each meeting shall be signed by the Chairperson of that meeting or the next meeting. [Section 118 read with Rule 25 of the companies (Management and Administration) Rules, 2014]
- The minutes kept in accordance with the provisions of section 118 shall be evidence of the proceedings recorded therein. [Section 118 (7)]
- The Minutes books to be preserved permanently in physical or electronic

form with Timestamp and in the custody of the company secretary or any director duly authorized by the Board for the purpose and shall be kept at the registered office or such place as Board may decide. [Rule 25 of the companies (Management and Administration) Rules, 2014 read with SS-1-para 8]

### **Attendance at meetings**

Every company shall maintain attendance registers for the meetings of the Board and Meetings of the Committee and comply with the other requirements specified in SS-1 Para 4.

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## **EXEMPTION & EXCEPTION TO PRIVATE COMPANY**

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### **SECTION 180 SHALL NOT APPLY**

Section 180 deals with restrictions on powers of the Board and contains the list of transactions that have to be transacted at the general meeting by passing a special resolution.

Private Companies are now exempted. Hence, Board of Directors of private companies have been empowered to do the following acts without seeking the approval of members:

- a. to sell, lease or otherwise dispose of the whole or substantially the whole of the undertaking of the company,
- b. to invest compensation received on merger or amalgamation;
- c. to borrow money in excess of aggregate of paid-up share capital and free reserves; and
- d. to remit, or give time for the repayment of, any debt due from a director.

Section 180 of Companies Act, 2013, is similar to the provisions of section 293 of Companies Act, 1956, which also imposed the restriction on the Board that certain transactions could be transacted only at the general meeting. The provisions of section 293 were not applicable to Private Companies.

### **SECTION 184(2) SHALL APPLY WITH THE EXCEPTION THAT THE INTERESTED DIRECTOR MAY PARTICIPATE IN SUCH MEETING AFTER DISCLOSURE OF HIS INTEREST.**

Section 184 deals with disclosure of interest by the director of every Company. Section 184(2) provides that the directors of a private company must refrain from participating in a board meeting where a matter in which they are interested is to be discussed.

This created impractical situation in case of private companies, which did not have any disinterested directors on a matter under consideration. The private companies have now been exempted from the provisions of Section 184(2), implying thereby that the interested directors of the private companies can take part in the meetings of the board after disclosing their interest.

Although, this provision will certainly lead to ease of decision making by private companies, there seems to be some anomaly. Such an interested director may participate in a Board meeting of a private company after disclosure of his interest but he cannot be counted for the purpose of ascertaining quorum u/s 174(3).

Section 300 of Companies Act, 1956 provided that director shall not take part in the discussion or vote on any contract or arrangement entered or proposed to be entered by the company if such director is interested. Further, the presence of interested director was not to be counted for the purpose of quorum. This section in entirety was not applicable to private companies.

The exemption now given to private companies allows an interested director to participate in a matter where he is interested. However, no exemption has been provided for private companies as regards quorum under section 174(3), provides that directors who are not interested and present at the meeting shall be the quorum. This may lead to a situation where a Board Meeting of a private company may not be held for want of quorum of disinterested directors although exemption has been given for an interested director to participate in a matter where he is interested.

### **SECTION 185 SHALL NOT APPLY TO PRIVATE COMPANIES SUBJECT TO CONDITIONS**

Section 185 of Companies Act, 2013, prohibits a company from advancing loan (including represented by book debt) to any of its directors or to any other person in which the director is interested. Prohibition even extends to giving of guarantee or providing any security in connection with any loan that the directors availed in their personal capacity.

Provisions of Section 185 shall not apply to a private company if the following conditions are fulfilled.

- (a) in whose share capital no other body corporate has invested any money;
- (b) if the borrowings of such a company from banks or financial institutions or anybody corporate is less than twice of its paid up share capital or Rs. 50 crore whichever is lower; and
- (c) Such a company has no default in repayment of such borrowings subsisting at the time of making transactions under this Section.

The limit on borrowings includes borrowings by way of inter-corporate deposits as well, thereby effectively serving as a limit on the debt-to-equity ratio. The fact that the private company should not have a corporate shareholder has been perceived as impractical since inter-corporate shareholdings are prevalent in the corporate sector.

The Section 185 of Companies Act, 2013 (2013 Act) is parallel to Section 295 and 296 of Companies Act, 1956 (1956 Act). The Private Companies were exempted from section 295 & 296 of Companies Act, 1956 without any conditions.

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#### **RELATED PARTY TRANSACTIONS**

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#### **SECTION 2(76)(viii) IS NOT APPLICABLE WITH RESPECT TO SECTION 188 (RELATED PARTY TRANSACTIONS)**

Certain related party transactions as specified in Section 188(1) require the approval of the Board of Directors at Board meeting, disclosure of certain information pertaining to such related party transactions in agenda of board meeting, interested director shall not remain present during discussion of related party transactions, etc. In addition transactions whose value is beyond prescribed limits, also requires prior approval of shareholders.

Clause (viii) of section 2(76) includes in the list of related parties:

- i. Holding company
- ii. Subsidiary Company
- iii. Associate company
- iv. Subsidiary of its holding company

Section 2(76) (viii) is now not applicable to a private company with respect to Section 188. Accordingly, a contract by a private company will not be regarded as a related party transaction if it is entered into by a private company with its holding company, subsidiary company, associate company or a subsidiary of its' holding company.

Although holding, subsidiary, associate company and subsidiary of holding company are excluded from definition of 'related party' but Director (other than independent Director), Key Managerial Personnel of holding company or their relative are still included in definition of related party. In effect a, number of transactions by or between private companies will still come under the ambit of section 188 as transactions by the "common director" or "common shareholder" under clause 76 of section 2 have not been exempted.

Rule 15 of Companies (Meetings of Board and its Powers) Rules, 2014 may be amended to incorporate the aforesaid exemption.

However, compliances with respect to disclosure requirements to related party transactions shall be applicable to a private company.

The term related party was not defined under Companies Act 1956. The provisions relating to related party transactions were spread across few sections covering aspects such as contract with interested director, officer holding place of profit, provisions relating to sole selling agent etc.

### **SECOND PROVISO TO SECTION 188 (1) SHALL NOT APPLY**

With regard to related party transactions, second proviso to Section 188(1) which states that no member of the company shall vote on the resolution, to approve any contract or arrangement which may be entered into by the company, if such member is a related party, has been exempted for private companies

One of the special features of general meeting approval in case of RPTs is that a member who is a related party is not allowed to vote on such a resolution. This provision shall not apply in case of private companies.

If a private company enters into any contract or arrangement with a related party requiring prior approval of the company, the related parties are now allowed to vote on such a resolution.

Most of the contracts or arrangements by a private company with its other related parties like its directors, a firm in which its director is a partner, a private company in which its director is a member or director will still require either consent of the Board or a resolution of the general meeting depending upon the threshold of the transaction. But members who are related parties will be allowed to vote on such resolutions.

This is a big relief to the private companies, since it was not possible to have disinterested members in private companies, considering the fact that in many cases, the members were mostly family or related to one another.

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## **MANDATORY COMMITTEES UNDER THE COMPANIES ACT, 2013**

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### **❖ PROVISIONS REGARDING AUDIT COMMITTEE NOT APPLICABLE TO PRIVATE COMPANIES (Section 177)**

**Purpose-** Audit Committee is required to be formed under Section 177 of Companies Act, 2013, read with Rule 6 of the Companies (Meetings of Board and its Powers) Rules, 2014, by the prescribed class of public companies.

Every Audit Committee shall recommend appointment, remuneration and terms of appointment of auditors of the company, review and monitor the auditor's independence and performance, and effectiveness of audit process, examine the financial statement and the auditors' report thereon etc.

**Applicability of Section 177 on Companies-** Following class of companies shall constitute an Audit Committee:

- (i) Every Listed Company
- (ii) Every Other Public Company having:
  - (a) Paid-up Share Capital of Rs.10 Crore or more or
  - (b) Turnover of Rs. 100 crore or more or
  - (c) Aggregate Outstanding Loans, borrowings, Debentures or Deposits exceeding Rs. 50 Crore or more

**Applicability on Private Companies-** As per the section 177 of Companies Act, 2013, read with Rule 6 of the Companies (Meetings of Board and its Powers) Rules, 2014, Private Companies are not required to constitute an Audit Committee.

**❖ NOMINATION & REMUNERATION COMMITTEE – PROVISIONS NOT APPLICABLE TO PRIVATE COMPANIES (Section 178)**

**Purpose-** Nomination and Remuneration Committee is required to be formed under Section 178 of Companies Act, 2013, read with Rule 6 of the Companies (Meetings of Board and its Powers) Rules, 2014, by the prescribed class of companies.

The Nomination and Remuneration Committee shall identify persons qualified to become directors and the ones who may be appointed in senior management, and recommend to the Board their appointment and removal and shall carry out evaluation of every director's performance.

It shall formulate the criteria for determining qualifications, positive attributes and independence of a director and recommend to the Board a policy, relating to the remuneration for the directors, key managerial personnel and other employees.

**Applicability of Section 178 to Companies -** Following class of companies shall constitute a Nomination and Remuneration Committee of the Board:

- (i) Every Listed Company
- (ii) Every Other Public Company having:
  - (a) Paid-up Share Capital of Rs.10 Crore or more or
  - (b) Turnover of Rs. 100 crore or more or
  - (c) Aggregate Outstanding Loans, debentures or Deposits exceeding Rs. 50 Crore or more

**Applicability to Private Companies-** As per the section 178 of Companies Act, 2013, read with Rule 6 of the Companies (Meetings of Board and its Powers)

Rules, 2014, Private Companies are not required to constitute a Nomination and Remuneration Committee.

**❖ STAKEHOLDERS RELATIONSHIP COMMITTEE – PROVISIONS NOT APPLICABLE TO PRIVATE COMPANIES**

**Purpose-** Stakeholders Relationship Committee is required to be formed under sub-section 5 of Section 178 of Companies Act, 2013.

Stakeholders Relationship Committee shall consider & resolve the grievance of security holders of the company.

**Applicability of Section 178(5) to Companies -** Every company having more than 1000 (One thousand) share holders, debenture holders, deposit holders and any other security holders at any time during a financial year shall constitute a Stakeholders Relationship Committee.

**Applicability to Private Companies-** As per the section 178(5) of Companies Act, 2013, Private Companies are not required to constitute a Stakeholders Relationship Committee.

**❖ CORPORATE SOCIAL RESPONSIBILITY COMMITTEE APPLICABLE TO PRIVATE COMPANIES IN CASE THE CSR PROVISIONS IS APPLICABLE TO SUCH COMPANY**

**Purpose-** Corporate Social Responsibility Committee is required to be formed under Section 135 of Companies Act, 2013. Further Schedule VII and the Companies (Corporate Social Responsibility Policy) Rules, 2014 shall be applicable to the Corporate Social Responsibility Committee.

The Corporate Social Responsibility Committee shall formulate and recommend to the Board, a Corporate Social Responsibility Policy in accordance with Schedule VII, recommend the amount of expenditure to be incurred on the activities and monitor the Corporate Social Responsibility Policy of the company from time to time.

**Applicability -** Every Company having:

- (i) Net Worth of Rs. 500 crore or more, or
- (ii) Turnover of Rs. 1000 crore or more or
- (iii) Net Profit of Rs. 5 crore or more

during any financial year shall constitute a Corporate Social Responsibility Committee of the Board.

**Applicability on Private Companies-** As per Section 135 of Companies Act, 2013, Private Companies falling under the above class of companies are required to form Corporate Social Responsibility Committee.

## APPOINTMENT AND REMUNERATION OF MANAGERIAL PERSONNEL

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### SECTION 196(4) & (5) SHALL NOT APPLY

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Section 196(4) deals with approval of the terms and conditions of appointment and remuneration of Managing/Whole time director/manager by the Board/General Meeting/Central Government as the case may be. Section 196(5) deals with validating actions of Managing/Whole time Director/managers, if the appointment is not approved by a company in general meeting.

Section 196(4) and Section 196(5) are not applicable to Private Companies. Thus, in case of Private Companies the appointment or remuneration of the managing director, whole time director or the manager does not require approval at the Board meeting/General Meeting and subsequently the approval of Central Government is also not required, even if the conditions for appointment is not as per the requirements of Schedule V of the Act.

Section 196 of Companies Act, 2013 (2013 Act) is similar to sections 197A, 267, 317, 384, 385 and 388 of the Companies Act, 1956 (1956 Act) read with Schedule XIII. Broadly they were not applicable to private companies which are not subsidiaries of public limited companies.

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### KEY MANAGERIAL PERSONNEL

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**Purpose-** Key Managerial Personnel is appointed as per Section 203 of the Companies Act, 2013, read with Rule 8 and Rule 8A of the Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014.

As per Section 203 the Companies Act, 2013, every company belonging to such class or classes of companies as may be prescribed shall have the following whole-time key managerial personnel:

- (i) Managing Director, or Chief Executive Officer or Manager and in their absence, a Whole-Time Director;
- (ii) Company Secretary; and

(iii) Chief Financial Officer

### **Applicability of Section 203 to Companies**

As per Section 203 read with Rule 8, every listed company and every other public company having a paid-up share capital of Rs. 10 crore or more shall have whole-time key managerial personnel.

However, as per Rule 8A of the Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014, a company other than a company covered under Rule 8 which has a paid up share capital of Rs. 5 crore or more shall have a whole-time company secretary.

### **Applicability to Private Companies**

Private Companies having paid-up share capital of Rs. 5 crore or more shall appoint a whole-time Company Secretary.

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## **APPOINTMENT OF COMPANY SECRETARY**

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### **Procedure for Appointment of Company Secretary in a Private Company**

1. Hold the board meeting to pass a Board Resolution for appointment of Company Secretary which should contain the terms and conditions of the appointment including the remuneration.
2. Receive consent letter from Company Secretary to act as Company Secretary.
3. After passing Board Resolution, the company shall file **Form DIR-12** for appointment of Company Secretary within 30 days of passing of the Board Resolution.

## ONE PERSON COMPANY

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### **Introduction**

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The introduction of OPC in the legal system is a move that would encourage corporatization of micro businesses and entrepreneurship with a simpler legal regime so that the small entrepreneur is not compelled to devote considerable time, energy and resources on complex legal compliances. This is step towards 'ease of doing business'. OPCs in India are aimed at structured, organised business units, having a separate legal entity ultimately playing a crucial role in further strengthening of the Indian economy. This will not only enable individual capabilities to contribute economic growth but also generate employment opportunity. One Person Company of sole-proprietor and company form of business has been provided with concessional /relaxed requirements under the Companies Act, 2013. With the implementation of the Companies Act, 2013, a single natural person can constitute a One Person Company.

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### **Genesis and Global Development**

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One Person Companies are in existence in certain countries. In India, this concept has been mooted by the Ministry of Corporate Affairs by allowing One Person Companies in India in line with UK, China, USA, Australia, Singapore, Qatar, Pakistan and several other countries. One Person Companies have been in existence in UK for several years now. China allowed formation of OPCs as recent as in 2005. A few other countries have also given the legal status for OPCs.

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### **One Person Company during March, 2017 (MCA Report)**

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In the month of March, 2017 total 11,293 Companies are incorporated out of which 552 companies are One Person Companies.

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### **Meaning of One Person Company**

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Section 2(62) of the Companies Act, 2013 define "One Person Company" as a company which has only one person as a member.

OPC is a Private Company as per Section 3(1)(c). Rule 3 of the Companies (Incorporation) Rules 2014 provides that, only a natural person who is an Indian citizen and resident in India:-

- a) shall be eligible to incorporate a One Person Company;
- b) shall be a nominee for the sole member of a One Person Company.

The term "Resident in India" means a person who has stayed in India for a period of not less than one hundred and eighty two days during the immediately preceding one calendar year.

A person can incorporate only one "One Person Company", at any point of time and the said person shall not be a nominee of more than a One Person Company.

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

The name of the person nominated shall be mentioned in the memorandum of One Person Company and such nomination in **Form INC 32** [Single Application for Incorporation of Company (SPICe)], along with consent of such nominee obtained in **Form INC-3** and fee as provided in the Companies (Registration Offices and Fees) Rules, 2014 shall be filed with the Registrar at the time of incorporation of the company along with its memorandum and articles.

The person nominated by the subscriber or member of a One Person Company may, withdraw his consent by giving a notice in writing to such sole member and to the OPC. Provided that the sole member shall nominate another person as nominee within 15 days of the receipt of notice of withdrawal and shall send an intimation of such nomination in writing to the Company, along with the written consent of such other person so nominated in **Form No. INC-3**.

The Company shall within 30 days of receipt of notice of withdrawal of consent file with the Registrar, a notice of such withdrawal of consent and the intimation of the name of another person nominated by the sole member in **Form No. INC-4** along with prescribed fees.

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### **Salient features of OPC**

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The salient features of OPC are:

- It is run by an individual yet OPC is a separate legal entity similar to that of any registered corporate. It will enjoy all the benefits of entity with limited liability, further adequate safeguard is provided to ensure that OPC "Lives

on” even after the death or disability of the sole owner through appointment of another person as a nominee shareholder.

- A One Person Company is incorporated as a private limited company.
- OPCs are required to suffix letters ‘OPC’ with their name.
- It must have only one member at any point of time and may have only one director.
- The member and nominee should be natural persons, Indian Citizens and Resident in India. The term “resident in India” means a person who has stayed in India for a period of not less than 182 days during the immediately preceding one calendar year.
- One person cannot incorporate more than one OPC or become nominee in more than one OPC. [Rule 3 of Companies (Incorporation) Rules, 2014]
- If a member of OPC becomes a member in another OPC by virtue of his being nominee in that OPC then within 180 days he shall have to meet the eligibility criteria of being member in one OPC.
- OPC would lose its status, if paid up share capital exceeds Rs. 50 lakhs or average annual turnover is more than 2 crores in immediately preceding three consecutive years.
- No minor shall become a member or nominee of a One Person Company or hold share with beneficial interest.
- Such company cannot be incorporated or converted into a company under section 8 of the Companies Act, 2013.
- Such Company cannot carry out Non-Banking Financial Investment activities including investment in securities of any body corporate.
- Such company cannot convert voluntarily into any kind of company unless 2 years have expired from the date of incorporation, except in cases where capital or turnover threshold limits are reached.
- Where the paid up share capital the paid up share capital of an One Person Company exceeds Rs. 50 Lakhs or average annual turnover during the relevant period exceeds Rs. 2 Crores it shall cease to continue as an OPC.
- Such company shall be required to convert itself within 6 months of the date on which the paid up capital is increased beyond the prescribed limit or the last day of the relevant period during which annual turnover exceeds the limit into Private or Public Company, as the case may be.

- The OPC shall alter its MOA and AOA by passing a resolution in accordance with sub-section (3) of Section 122 of the Act to give effect to the conversion.
- The OPC shall within period of 60 days from requiring itself to convert into Private Company give notice to the Registrar in **Form No.INC 5** informing that it has ceased to be OPC and now required to convert itself into Private or Public Company
- If OPC or any officer of the OPC in default contravenes the provisions of the rules, OPC or any officer of the OPC shall be punishable with fine which may extend to ten thousand rupees and with a further fine which may extend to one thousand rupees for every day after the first during which such contravention continues.
- An existing private company other than a company registered under section 8 of the Act which has paid up share capital of Rs. 50 Lakhs or less or average annual turnover during the relevant period is Rs. 2 Crores or less may convert itself into One Person Company by passing a special resolution in the general meeting.
- Before passing such resolution, the Company shall obtain No Objection in writing from members and creditors.
- Copy of such Special Resolution shall be filed with Registrar within 30 days in **Form MGT 14**.
- The Company shall file an application in **Form No.INC.6** for its conversion into OPC along with prescribed fees by attaching following documents-
  - 1) The Directors of the Company shall give declaration by way of affidavit confirming that all the members and creditors of the Company have given their consent for such conversion and paid-up share capital, annual turnover is within the limits
  - 2) The list of members and list of creditors
  - 3) The latest audited Balance Sheet, Profit & Loss Account
- The copy of No Objection Letter of secured creditors.
- Mandatory rotation of auditor is not applicable.
- The annual return of a One Person Company shall be signed by the company secretary, or where there is no company secretary, by the director of the company.

- The provisions of Section 98 and Sections 100 to 111 (both inclusive), relating to holding of general meetings, shall not apply to a One Person Company.[Section 122(1)]
- A One Person Company needs to have minimum of one director. It can have directors up to a maximum of 15 which can also be increased by passing a special resolution as in case of any other company.
- For the purposes of holding Board Meetings, in case of a One Person Company which has only one director, it shall be sufficient compliance if all resolutions required to be passed by such a Company at a Board meeting, are entered in the minutes-book, signed and dated by the member and such date shall be deemed to be the date of the Board Meeting for all the purposes under this Act. Else, at least one Board Meeting must be held in each half of the calendar year and the gap between the two meetings should not be less than 90 days.[Section 173(5)]
- The financial statements of a one person company can be signed by one director alone. Cash Flow Statement is not a mandatory part of financial statements for a One Person Company. Financial statements of a one person company need to be filed with the Registrar, after they are duly adopted by the member, within 180 days of closure of financial year along with all necessary documents.
- Board's report to be annexed to financial statements may only contain explanations or comments by the Board on every qualification, reservation or adverse remark or disclaimer made by the auditor in his report.[Section 134(4)]
- The name of the company in Memorandum of Association must end with the last word with Private Limited (OPC).
- In the case of One Person Company, the name of the person who, in the event of death of the subscriber, or his incapacity to contract shall become the member of the company be nominated by the subscriber to the MOA of OPC.
- Contract by One Person Company: One Person Company limited by shares or by guarantee enters into a contract with the sole member of the company who is also the director of the company, the terms of contract or offer are in writing or contained in a memorandum or recorded in the minutes of the Board Meeting held next after entering into the contract. [Section 193(1)]

- Inform the Registrar about every contract entered into by the company within a period of fifteen days from the date of approval by the Board of Directors.
- Contracts in ordinary course of business are not required to comply with the above.

## **SMALL COMPANY**

### **Introduction**

The concept of "Small Company" has been introduced for the first time by the Companies Act, 2013. The Act identifies some companies as small companies based on their capital and turnover position for the purpose of providing certain relief/exemptions to these companies. Most of the exemptions provided to a small company are same as that provided to a One Person Company. We shall discuss here the privileges given to small companies under the Companies Act, 2013.

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### **Meaning of Small Company [Section 2(85)]**

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"Small company" means a company, other than a public company, –

- (i) paid-up share capital of which does not exceed Rs. 50 lakh or such higher amount as may be prescribed which shall not be more than Rs. 5 crore ;  
and
- (ii) turnover of which as per its last profit and loss account does not exceed Rs. 2 crore or such higher amount as may be prescribed which shall not be more than Rs. 20 crore :

Provided that nothing in this clause shall apply to –

- (A) a holding company or a subsidiary company;
- (B) a company registered under section 8; or
- (C) a company or body corporate governed by any special Act;

This means that a private company shall not be covered in the definition of small company if either its paid up share capital exceeds Rs. 50 lakhs or its turnover exceeds Rs. 2 crores.

Further, as per the definition of a small company, holding and subsidiary companies are specifically excluded from the concept of small company.

Thus even though both the holding company and subsidiary company may fulfill

the capital or turnover requirement of a small company, they will still fall outside the purview of small company and accordingly the benefits which are available to a small company cannot be applied to a company which is holding or subsidiary company.

In other words, a holding or a subsidiary company cannot enjoy the privileges of a small company even though they may fulfill the capital or turnover requirement of a small company.

Similarly, a company may classify as a small company in a particular year but may become ineligible in the next year and may become eligible again in the subsequent year.

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### **Exemptions & Benefits**

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Most of the benefits which are available to the small companies are the same as those which are available to a One Person Company. However, all the privileges which are available to a One Person Company are not available to a small company. The benefits which are accorded to a small company are:

#### **1. Signatures in the Annual Returns**

As per Section 92 of Companies Act, 2013, the annual return of the Company is required to be signed by a director and the Company Secretary (CS) or where there is no CS, by a company secretary in Practice.

But since a small company need not have a CS, this section provides that in case there is no company secretary, the annual return can be signed by the director of the company.

Companies (Amendment) Bill, 2016 seeks to insert a new proviso in sub-section (1) of section 92 to provide that Central Government may prescribe abridged form of Annual Return for One Person Companies and small companies.

#### *Abridged Board's Report Companies (Amendment) Bill, 2016*

Companies (Amendment) Bill, 2016 seeks to empower Central Government to prescribe abridged Board's report for small company and One Person Company.

#### **2. Board meetings**

Small Company shall be deemed to have complied with the provisions of section 173, i.e., meetings of Board, if at least one Meeting of the Board of Directors has been conducted in each half of a calendar year and the gap between the two meetings is not less than ninety days. [Section173(5)]

**3. Cash Flow Statement may be excluded from Financial statement**

As per Section 2(40) of the Companies Act, 2013, the Small Company is not required to include the Cash Flow Statement as a part of its financial statement.

**4. Rotation of Auditors**

The provision regarding mandatory rotation of the auditor or the maximum term of an auditor being one term of five years in case of an individual and two terms of five consecutive years in case of a firm of auditors is also not applicable to small company. (Section 139)

**5. Merger or amalgamation Process**

There is fast track procedure provided for the merger process of two or more small companies. The procedure is provided under section 233 read with the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.

**6. Filing fees in terms of section 403 of Companies Act, 2013:**

Fees for filings and other formalities u/s 403 of the Companies Act, 2013 is also comparatively lower for the small companies.

The Companies (Amendment) Bill, 2016 seeks to insert two new sections with respect to factors for determining the level of punishment and for lesser penalties for One Person Companies and small companies.

