

Action Points

1. Change in Letterhead – (Urgency – Immediate)

- Every company must disclose following information on its letterhead / bills or other official communications–
 - i. Full name
 - ii. In case the company has changed its name within preceding 2 years, previous name should also be disclosed.
 - iii. Address of its registered office
 - iv. Corporate Identity Number (21 digit number allotted by Government)
 - v. Telephone number,
 - vi. Fax number, if any,
 - vii. e-mail and
 - viii. Website addresses, if any.
 - ix. In case the company wants to disclose the Authorised capital, the company should also disclose paid-up capital prominently equally.

2. Registered Office - (Urgency – Immediate)

Every company has to maintain a registered office where the company can accept and acknowledge receipt of documents. In other words, company has to *maintain a person to acknowledge receipt of letters and other correspondence addressed to the company at its registered office.*

3. Related Party Transactions (Section 188) (Urgency – Immediate)

Applicability

- **Paid-up Capital Criteria** – Rs.10 crore or more, Boards approval with Shareholders Special Resolution. Below Rs. 10 crore, only BOD resolution is required.
- **Transaction Criteria**
 - Sale/Purchase of Goods/Material exceeding 25% of annual turnover as per last audited B/S
 - Sale/Purchase of Property exceeding 10% of the net worth as per last audited Balance Sheet.
 - Availing/Rendering services exceeding 10% of the net worth as per last audited Balance Sheet.
 - Appointment to any office exceeding Rs.2.5 Lakh per month
 - Remuneration for underwriting exceeding 1% of net worth as per last audited Balance Sheet.

4. Loans to Directors – (Urgency – Immediate)

A company **CANNOT** advance any kind of loan/guarantee/security to following:

- i) any director,
- ii) Director of Holding Company,
- iii) his or her partner,
- iv) his or her relative,
- v) Firm in which he or his relative is partner,
- vi) Private Limited company in which he is director or member or
- vii) Any Body Corporate whose 25% or more of total voting power or Board of Directors is controlled by him.

5. Allotment of shares – (Urgency – Case to Case)

All companies intending to make allotment of shares on or from 1 April 2014, regardless whether public or private, following must be complied with–

- Company should accept *Share Application Money from existing shareholders only in the proportion of their current shareholding* in the company.
- In case a company *does not intend to allot shares in the same proportion* or intends to allot shares only to few shareholders or to non-members, then the company should *obtain consent of members by passing Special Resolution*.
- Company should accept *Share Application Money only through normal banking channels* only i.e., not in cash.
- The amount received as *Share Application Money should be kept in a separate bank account* and should *not be used for business requirements till allotment of shares* is made.
- Company should *allot shares* against such application money *within 60 days* from the date of receipt.
- In case *allotment is not made*, pending share application has to be *refunded within 15 days* of expiry of 60 days.

Companies having Share Application Money as on 31st March, 2014, following options are available –

- Refund such application money immediately or,
- Make an allotment against such money immediately or,
- In case the Share Application Money is accepted from members, directors or Directors' relatives, convert the Share Application Money into unsecured loan as on 31st March, 2014. In case, Share Application Money is treated as a loan, return must be filed with ROC by 30th June, 2014 and return the loan by 31st March, 2015.

6. Acceptance of Deposits/Unsecured Loan – (Urgency – Case to Case)

- Company cannot accept deposit/unsecured loan from relative of a director.
- All new deposits accepted from 'Members' are subject to certain terms, conditions and procedures.
- Company can accept deposits from a director during the tenure of his directorship.
- **Compliance** to be followed in case of outstanding deposits as on 31st March 2014 is:
 - i. File a return of such deposits/loans till 30th June 2014, and
 - ii. Repay all such deposits/loans on or before 31st March 2015.

7. Corporate Social Responsibility (Urgency – by finalising Accounts for year 2014)

7.1. Applicability-

Provisions of CSR are applicable to companies (and its holding and subsidiary) which has

- a) Net Profit equal to more than 5 Crore OR
- b) Networth equal to more than 500 Crore OR
- c) Turnover = / > 1000 Crore.

The provisions are applicable with effect from financial year commencing from 1 April 2014.

Once the provisions are applicable, the company has to comply for next atleast 3 years.

7.2. CSR Corpus

Company has to spend 2% of average net profits for last 3 years excluding following profits

- a) Profits earned by overseas branch
- b) Dividends received from other companies to whom provisions of CSR are applicable.

7.3. Eligible Activities

- a) Eradicating extreme hunger and poverty
- b) Promotion of education
- c) Promoting gender equality and empowering women
- d) Reducing child mortality and material health
- e) Combating HIV and other deceases
- f) Ensuring environmental sustainability
- g) Employment / Enhancing vocational skills
- h) Social business projects
- i) Contribution of Prime Minister Relief Funds or any other Central / State Government Fund.

What You can Do

- a) Even ongoing projects / programs eligible
- b) Activities can be undertaken through a trust / society / company either by itself or through its holding/subsidiary/associate company.
- c) Activities can be undertaken through any other trust / society / company provided it has a track record of 3 years of undertaking similar programs and company has specified modalities of utilization of funds, monitoring and reporting.
- d) Company can collaborate with other companies
- e) Build CSR capability of their own personnel upto 5% of net CSR corpus in a Financial Year

What You Cannot Do

- a) Activities in normal course of business
- b) Activities exclusively for employees and/or their families
- c) Activities undertaken outside India
- d) Contribution to Political Party

7.4. CSR Committee & Functions

A Committee called 'CSR Committee' has to be formed which shall consist of Three Director one of whom shall be independent. Provided that

- a) Two Directors in case of Private Limited company with only 2 directors can constitute committee.
- b) Independent Director is not required in case of Private Limited company or closely held public limited company.
- c) In case of foreign company, it shall consist of Indian Representative and another Director nominated by Foreign Company.

CSR Committee will be entrusted with following functions

- a) Formulate and recommend to the Board CSR activities
- b) Deciding the contribution to CSR corpus
- c) Approval of projects
- d) Monitoring progress of CSR activities

7.5. CSR Policy

CSR Committee shall formulate a CSR policy which shall contain

- a) List of activities included in Schedule VII
- b) Modalities of execution with schedules
- c) Modalities to monitor progress

7.6. Disclosures

7.6.1 Website: If the company has a website, the CSR policy has to be placed on the company's website.

7.6.2 Directors Report: Directors Report should disclose following in prescribed format-

- a) Composition of CSR Committee,
- b) CSR Policy
- c) Details of CSR Activities, sector, location and amount spend
- d) Reasons for not spending the amount if any.

The information has to be in specified format and signed by CEO along with 2 members of CSR committee one of whom shall be the Chairman of CSR committee.

Inference is drawn that the CSR Committee should meet before the Board Meeting and make recommendation to Board to enable it to add details in its report.

8. Articles of Association- (Urgency - By Next General Meeting)

In the next General Meeting, it is desirable to adopt Table F as standard set of Articles of Association of the Company with relevant changes to suite the requirements of the company.

Further, *every copy of Memorandum and Articles issued to members should contain a copy of all resolutions / agreements that are required to be filed with the Registrar.*

9. Transfer of Shares – (Urgency – Case to Case)

Every company shall accept Form SH4 (instead of 7B earlier) which is application by members for transfer of shares supported by Share Certificates. In case shares are held in Demat Form Delivery Instruction Slip should be attached.

10. Disqualification of a Director – (Urgency – Case to Case)

All existing directors must have Directors Identification Number (DIN) allotted by Central Government. Directors who already have DIN need not take any action. Directors not having DIN should initiate the process of getting DIN allotted to him and inform companies. The company, in turn, has to inform Registrar.

11. Resignation of a Director – (Urgency – Case to Case)

Following are new provisions of resignation of a director –

- The company shall within thirty days from the date of receipt of notice of resignation from a director, inform the Registrar of Companies such resignation in prescribed form (i.e DIR – 12)
- Post on its website such information about resignation
- Every Outgoing Director shall also intimate Registrar of Companies of resignation in prescribed form along with reasons of resignation (i.e DIR – 11).

12. Limit on number of Directorships – (Urgency – Within 1 Year)

An individual can be a Director on maximum of 20 companies out of which not more than 10 should be public limited companies. In case a person is a Director in more than 20 companies, he should elect to stay as Director in such number of companies to company with this rule within 1 year.

13. Financial year- (Urgency – 2 Years)

Under the new Companies Act, all companies have to follow a uniform Financial Year i.e., from 1st April to 31st March. Those companies which follow a different financial year have to align their accounting year to 1st April to 31st March within 2 years. It is desirable to do the same as early as possible since most the compliances are on financial year basis under the new Companies Act.

14. Appointment of Statutory and Internal Auditor- (Urgency – Next Board / General Meeting)

Internal Audit-

Every **listed** company to appoint an internal auditor in a Board Meeting.

Every **unlisted** public company:

- Having a paid up capital of INR 50 Cores; or
- Turnover of INR 200 Crore; or
- Outstanding loans and borrowings from bank or public financial institutions **exceeding Rs. 100 crores or more** at any time during the preceding financial year; or
- Outstanding Deposit of INR 25 Crores.

to appoint an internal auditor in Board meeting.

Every **private** public company:

- **turnover of Rs. 200 crores or more** during the preceding financial year; or
- outstanding loans and borrowings from bank or public financial institutions **exceeding Rs. 100 crores or more** at any time during the preceding financial year.

Statutory Auditor-

The present auditors who have already completed 10 years and as per the Act, the auditors shall not hold office for more than 2 terms of 5 years. However, there is a transition period of 3 years given in the Act to comply with these provisions and accordingly company would be required to look for appointment of new firm. As deliberated by Audit Committee members, the company would look out for new firm of auditors to be appointed as Joint Auditors for next financial year. This can be illustrated as below:

No. of consecutive years for which an audit firm has been functioning as auditor in the same company [in first AGM held after the commencement of provisions of section 139(2)]	Maximum numbers of consecutive years for which the firm may be appointed in the same company (including transitional period)	Aggregate period which the firm would complete in the same company in view of column I and II.
I	II	III
10 years (for more than 10 years)	3 years	13 years or more
9 years	3 years	12 years
8 years	3 years	11 years
7 years	3 years	10 years
6 years	4 years	10 years
5 years	5 years	10 years
4 years	6 years	10 years
3 years	7 years	10 years
2 years	8 years	10 years
1 years	9 years	10 years

ii) Statutory auditor **cannot** render following services-

- Accounting and Book Keeping
- Internal Audit
- Design and Implementation of MIS
- Actuarial Services
- Investment Advisory
- Outsourced Financial Services
- Management Services and
- Such services as may be prescribed.

In case existing statutory auditor is rendering such services, they have to cease giving such services by end of 1st financial year.

15. Foreign Company- (Urgency – Immediate)

A foreign Company is a company incorporated outside India which has a place of business in India whether by itself or through an agent physically or through electronic mode. Since 'through electronic mode' has been brought into the ambit of definition, many companies who does not have a physical presence in India but do online business have come within the scope of the definition and requiring compliance of Chapter XXII of the Companies Act, 2013.

16. Depreciation method to be changed as per useful life of the asset

The Company is required to change the method of depreciation and the exercise for same is suggested to be started and the asset code and depreciation keys be revisited in order to ensure that company complies with the new depreciation rates.

17. Remuneration Committee

The nomenclature of Remuneration Committee and Investor Grievance Committee would be changed in order to realign with the requirements of the provisions of the Companies Act, 2013.

18. **Report on Annual General Meeting**

The Company would be required to make a report to Registrar of Companies within 30 days from the date of Annual General Meeting on the matters as prescribed under the Act.

19. **Quorum for General Meeting (Section 174 Yet to be Notified)**

The Company would need to ensure that requisite quorum of at least 30 persons present in person at every General Meeting once the section is notified.

20. **Electronic Voting**

Companies having more than 1000 shareholders shall need to provide this facility.

21. **Interested Directors (Section 184)**

Disclosure of Interest

According to Section 184 of The Companies Act 2013 (herein after referred to as an "Act") every director is required to disclose his concern or interest in any company or companies or bodies corporate (including shareholding interest), firms or other association of individuals, by giving a notice in writing in Form MBP-1.

Every director shall at the first meeting of the Board in which he participates as a director and thereafter at the first meeting of the Board 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 any company or companies or bodies corporate, firms, or other association of individuals which shall include the shareholding.

According to Section 179 (3) (k), the Board of Directors of a company shall exercise the power to take note of the disclosure of director's interest and shareholding.

According to Section 117(3)(g) of the Act resolutions passed in the sub section (3) of section 179 shall be filed with Registrar within 30 days of passing the resolution in Form MGT -14.

If a director of the company contravenes the provisions of section 184 of the Act then such director shall be punishable with imprisonment for a term which may extend to one year or with fine which shall not be less than fifty thousand rupees but which may extend to one lakh rupees, or with both.

Thus it is necessary for all the companies to obtain declaration in Form MBP 1 from all its directors and has to file the same with MCA in form MGT 14 within 30 days of the first board meeting in the financial year.

Every Director shall disclose his concern or interest in any company or bodies corporate (more than 2% shareholding) or firms or other association of individuals at the first meeting of the Board in which he participates and thereafter at the first Board meeting in every financial year or whenever there is any change from the previous disclosure made or whenever there is any new interest created, in the next Board meeting as may be held. The Director shall not participate in the meeting in which any contractor agreement is discussed and shall only disclose his interest thereof. A contract or arrangement entered into by the Company without such disclosure shall be voidable at the option of the Company.

Please note: Earlier Form 24AA was prescribed for such disclosure, but now the prescribed Form is MBP-1. Disclosure has to be made in the next meeting of giving the notice under Form MBP 1. All such notices are to be kept at the registered office of the Company & preserved for a period of 8 years from the end of Financial Year to which it relates & shall be kept in custody of CS or person authorized by the Board.

22. Disqualifications of a Director Section 164(2)

According to the Companies Act, 2013 a director is not eligible to be re-appointed for 5 years as a Director of the company that has:

- 1) Not filed Financial Statements or annual returns for any continuous period of 3 years ; or
- 2) Failed to repay debt (including interest due), redeemable debentures on due (including interest due) date or pay dividend declared.

Please Note: Form DIR 8 has been prescribed to inform about such disqualification. Further Company needs to file Form DIR 9 if the company fails to furnish Documents under the said sub-section. When the Company fails to file Form DIR 9 within 30 days of such discrepancy, then the disqualification occurs.

23. Report on changes in shareholding of promoters and top ten shareholders

The Company is required to report such changes to Registrar within 15 days.

24. Information to be Disclosed

Every company **shall** get its **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, printed in all its business letters, bill heads, letter papers and all its notices and other official publications;**

25. Secretarial Audit/Application of Secretarial Standards

Secretarial Audit on annual basis shall be required to be carried out in compliance with the provisions of the Companies Act, 2013.

It applies to all listed companies and public companies have paid – up capital of Rs. 50 crore or turnover of Rs. 250 crore.

26. Code of Conduct for Independent Directors to be laid

Draft code of conduct for Independent Directors has been laid down as provided under Schedule IV and as per Sec 149(8), Company and Independent Directors need to abide by aforesaid schedule. The Board may take on record and approve the Code of Conduct in its meeting.

27. Fixed Deposits

The Company not to accept fresh deposits and further company needs to look out for credit rating and insurance firms in order to get its rating and deposit insurance done once the provisions of the new Act in respect of deposits are notified.

28. Appointment of Chief Financial Officer, MD/WTD or Manager

Definition of KMP [Section 2(51)]

- ✓ KMP includes CEO, MD, WTD, CFO or as may be prescribed (nothing as yet).
- ✓ **Section 2(76) & Rule 3 of Companies (M&A) Rules, 2014** – Contracts with KMPs/Directors or their relatives(also of Holding Companies) are Related Party Transactions.

Appointment

- **Rule 8** – Every Public Company (Listed & Unlisted) with Rs. 10 crore paid up share capital or more shall have a whole time KMP.
- **Section 197(4)** – Appointment to be authorized by the Articles or a resolution or if Articles so say Special Resolution of members.

Section 196(2) – The **term of appointment** shall not exceed 5 years. Provided that the **re-appointment** shall not be made earlier than 1 year of expiry of his term.

Rule 3 - File a **return of appointment** of a MD, WTD or Manager, CEO, CS and CFO within 60 days of the appointment, with the Registrar in Form No. MR.1 along with such fee as may be specified for this purpose.(not specified as yet).

Compliances

- The notice of BOD meeting & member's meeting shall include the T&C of such appointment, remuneration payable & such other matters including interest, of a Director or Directors.
- SR to be filed in Form MGT 14 with ROC within 30 days of passing so.

Disqualification under Schedule V - A person shall be qualified under Part 1 of the schedule to be appointed as a MD/WTD. He shall be considered a resident if he has been staying in India for a continuous period of not less than 12 months immediately preceding the date of appointment.

29. **Related Parties Defined**

A complete list of related party needs to be prepared and same shall be updated for regular control check that if any transaction is entered, the same would be required to be referred to Company Secretary and Finance Head to ensure the compliance with the related party provisions. The payments shall be released only once the same is approved by Company Secretary/ Finance Head.

30. **Whistle Blower Policy to be prepared**

The Board needs to adopt the Whistle Blower Policy and the same needs to be placed on website of the company.

31. **Signing of Financial Statements**

The Company shall ensure that Financial Statements shall now also be signed by CEO and CFO of the Company.

CAUTION: This is only a brief and not be taken as exhaustive.

Disclaimer

The above information is based on the understanding of the Companies Act 2013, not specific to any user. We shall not be held responsible for any action taken on the basis of above information.

The user is advised to seek professional service specific to its circumstances.

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