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# News Alert\*



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## **COMPANY LAW SETTLEMENT SCHEME, 2014**

- MCA vide General Circular No. 34/2014 dated August 12, 2014 gave an opportunity to the companies **which have made a default in filing of annual statutory documents** to make their default good by filing belated documents under the ‘Company Law Settlement Scheme, 2014 (“CLSS 2014”)’.
- This scheme i.e CLSS 2014 will be in operation from **August 15, 2014 to October 15, 2014**.
- This scheme gives to such companies-
  - i. **immunity for prosecution; and**
  - ii. **charging a reduced additional fee of 25% of the actual additional fees payable under Section 403 of the Act read with Companies (Registration Office and Fees) Rules, 2014.**
- This scheme also gives an opportunity to inactive companies to get their companies declared as ‘dormant company’ as under Section 455 of the Act by filing a simple application at reduced fees.
- The application for seeking immunity in respect of belated documents filed under the Scheme may be made electronically in the **E-Form CLSS-2014**.
- **Scheme is applicable to the following E-Forms:**
  - i. E-Form 20B – Form for filing Annual Return by a company having share capital;
  - ii. E-Form 21A - Particulars of Annual return for the company not having share capital;
  - iii. E-Form 23AC, 23ACA, 23AC-XBRL and 23ACA – XBRL – Forms for filing balance sheet and profit and loss account;
  - iv. Form 66 – Form for submission of Compliance Certificate with the Registrar;
  - v. Form 23B – Form for intimation of appointment of auditors.
- **Scheme shall not apply to the companies as detailed below:**
  - i. Companies against which action for striking off the name under Section 560(5) has already been initiated by the Registrar of Companies; or
  - ii. Where any application has been filed by the companies for action of striking off name from the Registrar of Companies; or
  - iii. Where applications have been filed for obtaining dormant status under Section 455 of the Act; or
  - iv. To vanishing companies.

- **Scheme for Inactive Companies:**

The defaulting inactive companies, while filing due documents under CLSS-2014 can simultaneously, either:

- i. Apply to get themselves declared as Dormant Company under section 455 of the Companies Act, 2013 by filing E-Form MSC – 1 at 25% of the fee for the said form; or
  - ii. Apply for striking off the name of the company by filing E-Form FTE at 25% of the fee payable on form FTE.
- **In case of defaulting companies which avail of the CLSS 2014 and file all belated documents, the provisions of Section 164 (2) (a) of the Companies Act, 2013 (“the defaulting Directors”) shall apply only for the prospective defaults, if any, by such companies.**
  - At the conclusion of this scheme the Registrar shall take necessary action under the Companies Act, 1956/2013 against the companies who have not availed this scheme CLSS 2014 and are in default in filing these documents in a timely manner.
  - The link of the circular is as follows:  
[http://www.mca.gov.in/Ministry/pdf/circular\\_34\\_13082014.pdf](http://www.mca.gov.in/Ministry/pdf/circular_34_13082014.pdf)

# **AMENDMENTS WITH RESPECT TO TRANSACTIONS TO BE ENTERED INTO WITH RELATED PARTIES**

MCA vide **draft published Notification** dated 14<sup>th</sup> August, 2014 suggested amendments with respect to the criteria to be complied with for entering into transactions with related parties .

## **Analysis of Related Party Transactions (Section 188 of Companies Act, 2013)**

Section 188 requires a company to obtain approval of the Board and of the members, in certain situations, prior to entering of any transaction or agreement with a related party.

An analysis of Section 188 requires understanding the following:

- Applicability of the Section
- Definition/Meaning of Related Party
- Transactions which are deemed as related party transactions
- Nature of approvals required
- Disclosure norms
- Exemptions/Non-applicability
- Consequences of non-compliance

The above dimensions are explained in detail as follows:

### **Applicability of the Section**

Section 188 is applicable to both private and public companies w.e.f. 1<sup>st</sup> April, 2014

### **Definition /Meaning of Related Party**

Section 2 (76), read with relevant rules made thereunder, defines a related party as under:

“related party”, with reference to a company, means—

- i. a director or his relative;
- ii. a key managerial personnel or his relative;
- iii. a firm, in which a director, manager or his relative is a partner;
- iv. A private company in which a Director or Manager or his relative is a member or director;
- v. a public company in which a director or manager is a director and holds along with his relatives, more than 2% of its paid-up share capital;
- vi. anybody corporate whose Board of Directors, managing director or manager is accustomed to act in accordance with the advice, directions or instructions of a director or manager;
- vii. any person on whose advice, directions or instructions a director or manager is accustomed to act:

Provided that nothing in sub-clauses (vi) and (vii) shall apply to the advice, directions or instructions given in a professional capacity;

viii. any company which is—

(A) a holding, subsidiary or an associate company of such company; or

(B) a subsidiary of a holding company to which it is also a subsidiary;

ix. a director 'other than an independent director' or key managerial personnel of the holding, subsidiary or associate company of such company or his relative;

### **Any transaction between a company and its related party relating to**

- sale, purchase or supply of any goods or materials;
- selling or otherwise disposing of, or buying, property of any kind;
- leasing of property of any kind;
- availing or rendering of any services;
- appointment of any agent for purchase or sale of goods, materials, services or property;
- such related party's appointment to any office or place of profit in the company, its subsidiary company or associate company; and
- underwriting the subscription of any securities or derivatives thereof, of the company.

“office or place of profit” means any office or place—

- (i) where such office or place is held by a director, if the director holding it receives from the company anything by way of remuneration over and above the remuneration to which he is entitled as director, by way of salary, fee, commission, perquisites, any rent-free accommodation, or otherwise;
- (ii) where such office or place is held by an individual other than a director or by any firm, private company or other body corporate, if the individual, firm, private company or body corporate holding it receives from the company anything by way of remuneration, salary, fee, commission, perquisites, any rent-free accommodation, or otherwise;

### **Nature of approvals required**

#### Approval of Board of Directors

- Every company needs to seek the approval of its Board of Directors for entering into any related party transaction, as listed above, irrespective of the capital of the company or the value of the transaction.

- Approval of the Board has to be sought at a duly convened meeting of the Board and same cannot be obtained by passing of a resolution by circulation.
- Where any director is interested in any contract or arrangement with a related party, such director shall not be present at the meeting during discussions on the subject matter of the resolution relating to such contract or arrangement.

**Prior approval of Members by means of Special Resolution not required now for company having paid up share capital of Rs. 10 Crore or More**

- Earlier, proviso (1) of Section 188 of the Companies Act, 2013 read with Rule 15 of the Companies (Meeting of Board and its Powers) Rules, 2014 states that a company having paid-up share capital which is equal to or exceeds **Rs.10 Crore**, or transactions for value of threshold limit mentioned in the Rules required (i) approval of Board of Directors and (ii) prior approval of members by means of a special resolution before entering into any related party transactions. **However, as the draft notification dated 14<sup>th</sup> August, 2014, the above mentioned threshold limit of Rs. 10 Crore of the paid-up share capital, is withdrawn.**

Therefore, now if the Company intends to enter into a Related Party Transaction then in addition to the approval of the Board of Directors of the Company, prior approval of members by means of a special resolution must also be sought for entering into transactions for the below mentioned threshold limits of transactions only, disregard of companies paid up share capital :

- a. Sale, purchase or supply of any goods or materials directly or through appointment of agents **exceeding 10% of the turnover of the company or Rs. 100 Crore, whichever is lower.**
- b. Selling or otherwise disposing of, or buying, property of any kind directly or through appointment of agents **exceeding 10% of networth of the company or Rs. 100 Crore whichever is lower**
- c. Leasing of Property of any kind **exceeding 10% of the Net Worth or 10% of turnover of the company or Rs. 100 Crore whichever is lower.**
- d. Availing or rendering of any service directly or through appointment of agents **exceeding 10% of the turnover of the company or Rs. 50 Crore, whichever is lower.**

**The limits specified above shall apply for transaction(s) to be entered into either individually or taken together with the previous transactions during a financial year.**

- e. Appointment to any office or Place of Profit in the Company, its Subsidiary Company or Associate Company at a **monthly remuneration exceeding Rs. 2.5 Lakhs.**
- f. Remuneration for underwriting the subscription of any Securities or Derivatives thereof of the company **exceeding 1% of the Net Worth.**

The Turnover or Net Worth referred above shall be computed on the basis of the Audited Financial Statements of the preceding Financial Year.

- No member of the company shall vote on such special resolution, to approve any contract or arrangement which may be entered into by the company, if such member is a related party. The term 'related party' in the above context refers **only to such related party** as may be a related party **in the context of the contract or arrangement** for which the said special resolution is being passed.
- In case of wholly owned subsidiary, the special resolution passed by the holding company shall be sufficient for the purpose of entering into the transactions between wholly owned subsidiary and holding company.

### **Disclosure norms**

- **Disclosures to be made in notice calling Board Meeting:**
  - (a) name of the related party and nature of relationship;
  - (b) nature, duration of the contract and particulars of the contract or arrangement;
  - (c) material terms of the contract or arrangement including the value, if any;
  - (d) any advance paid or received for the contract or arrangement, if any; and
  - (e) any other information relevant or important for the Board to take a decision on the proposed transaction.
- **Disclosures to be made in the explanatory statement to be annexed to notice of general meeting:**
  - (a) name of the related party ;
  - (b) name of the director or key managerial personnel who is related, if any;
  - (c) nature of relationship;
  - (d) nature, material terms, monetary value and particulars of the contract or arrangement;
  - (e) any other information relevant or important for the members to take a decision on the proposed resolution.

### **Disclosures to be made in Board's Report**

Every related party transaction or contract shall be disclosed in the Board's report along with the justification for entering into such contract or arrangement.

### **Exemptions/Non-applicability**

- The above mentioned provisions will not be applicable in case of transactions entered into by the company in its **"ordinary course of business"**, which are on **"arm's length basis."**

"Arm's length transaction" means a transaction between two related parties that is conducted as if they were unrelated, so that there is no conflict of interest.

- Transactions arising out of Compromises, Arrangements and Amalgamations dealt with under specific provisions of the Companies Act, 1956(Companies Act, 2013, **will not attract** the requirements of section 188 of the Companies Act, 2013.( 17<sup>th</sup> July 2014 Circular 30/ 2014)
- Contracts entered into by companies, after making necessary compliances under Section 297 of the Companies Act, 1956, which already came into effect before the commencement of Section 188 of the Companies Act, 2013, **will not require fresh approval** under the said section 188 till the **expiry of the original term** of such contracts. Thus, **if any modification** in such contract is made on or after 1st April, 2014, the requirements under section188 **will have to be complied with**. ( 17<sup>th</sup> July 2014 Circular 30/ 2014)

### **Consequences of non-compliance**

- If any related party transaction or contract is entered without seeking Board's and/or Members' approval and if the same is not ratified by the Board and/or Members as the case may be, within 3 months at a meeting, then the contract or transaction will be voidable at the option of the Board and if the transaction is with any related party to any director or is authorised by any other director, then the concerned directors are liable to indemnify any loss incurred by the company.
- The link of the draft published Notification is as follows:  
[http://www.mca.gov.in/Ministry/pdf/NCA\\_Rules\\_16082014.pdf](http://www.mca.gov.in/Ministry/pdf/NCA_Rules_16082014.pdf)

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