



**Private Circulation Only*

Newsletter for May, 2015 **By Amita Desai & Co.**



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MCA UPDATES:

A. Clarification Companies (Incorporation) Amendment Rules, 2015.

- The Ministry vide Notification dated May 1, 2015 issued the Companies (Incorporation) Amendment Rules, 2015 incorporating amendments in the Companies (Incorporation) Rules, 2014.
- The Ministry issued the following amendments in the Companies (Incorporation) Rules, 2014.

- **Rule 5 shall be omitted;**

- “Rule 5- Penalty

- If One Person Company or any officer of such company contravenes the provisions of these rules, One Person Company or any officer of the One Person Company 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.”

- in rule 6, for sub-rule (11), for the words “having paid up share capital of fifty lakhs rupees or less or average annual turnover”, the words “having paid up share capital of fifty lakhs rupees or less **and** average annual turnover” shall be substituted;
- in rule 7, in sub-rule (1),
A private company other than a company registered under section 8 of the Act having paid up share capital of fifty lakhs rupees or less ~~or~~ **and** (word is substituted) average annual turnover during the relevant period is 2 crore rupees or less may convert itself into one person company by passing a special resolution in the general meeting;

▪ **after rule 7, the following rules inserted, namely:-**

"7A. **Penalty-** If a One Person Company or any officer of such company contravenes any of the provisions of these rules, the One Person Company or any officer of the such Company shall be punishable with fine which may extend to five thousand rupees and with a further fine which may extend to five hundred rupees for every day after the first offence during which such contravention continues";

- in rule 8, in sub-rule (2), in clause (b), in sub-clause (xi), in the proviso, after the words and figures "under section 248 of the Act", the words, figures and brackets "or under section 560 of the Companies Act, 1956 (1 of 1956)" shall be inserted;

“Rule 8(2)(b)(xi)

The proposed name is identical to the name of a company dissolved as a result of liquidation proceeding and a period of two years have not elapsed from the date of such dissolution:

Provided that if the proposed name is identical with the name of a company which is struck off in pursuance of action under section 248 of the Act **or under section 560 of the Companies Act, 1956 (1 of 1956) (words inserted)**, then the same shall not be allowed before the expiry of twenty years from the publication in the Official Gazette being so struck off;”

- in rule 16, in sub-rule (1), for clause (q):-
~~(q) the specimen signature and latest photograph duly verified by the banker or notary shall be in the prescribed Form No.INC.10.~~

Substituted by

"(q) the promoter or first director shall self attest his signature and latest photograph in Form No.INC.10.

▪ **after rule 35, the following rules inserted namely:**

36. Integrated Process for Incorporation.-

(1) For the purpose of simplifying the filing of forms for incorporation of a company, the integrated process shall apply with effect from May 1, 2015.

(2) For the purposes of sub-rule (1), the application for allotment of Director Identification Number up to three Directors, reservation of a name, incorporation of company and appointment of Directors of the proposed company shall be filed in Integrated Form No. INC-29 for One Person Company, private company, public company and Producer Company, with the Registrar within whose jurisdiction the registered office of the company is proposed to be situated, along with the fee of rupees two thousand in addition to the registration fee as specified in Companies (Registration of Offices and Fees) Rules, 2014.

(3) For the purposes of filing Integrated Incorporation form, the particulars of maximum of three directors shall be allowed to be filled in INC-29 and allotment of Director Identification Number of maximum of three proposed directors shall be permitted in Form INC-29 in case of proposed directors not having approved Director Identification Number.

(4) The promoter or applicant of the proposed company shall propose only one name in e-form No. INC-29.

(5) The promoter or applicant of the proposed company may prepare Memorandum of Association as per templates in Form INC-30 and may opt for templates of Articles of Association in Form INC-31 in accordance with the provisions of rule 13 for preparation of Memorandum of Association and Article of Association.

(6) The promoter or the applicant shall sign and witness, the Memorandum of Association and Articles of Association in the forms downloaded from the portal of the Ministry of Corporate Affairs and scanned legibly and attach to e-form INC-29 in accordance with the provisions of rule 13 for preparation of Memorandum of Association and Articles of Association.

(7) The facility to file integrated application for incorporation in Form INC-29 is available as an option to the process for separate applications for allotment of Director Identification Number, reservation of name and Incorporation of a company as provided in these rules.

(8) For an application filed using the integrated process of incorporation as provided in this rule, the provisions of sub-clause (i) of sub-section (5) of section of the Act and rule 9 of these rules shall not apply.

(9) A company using the provisions of this rule may furnish verification of its registered office under sub-section (2) of section 12 of the Act by filing e-Form INC - 29 in which case the company shall attach along with such e-Form INC-29, any of the documents referred to in sub-rule (2) of rule 25.

(10) The requirement of filing e-form INC-28 may be dispensed with if, the proposed company maintains its registered office at the given correspondence address.

(11) The Registrar within whose jurisdiction the registered office of the company is proposed to be situated shall process INC-29 including application for allotment of Director Identification Number.

(12)(a) Where the Registrar, on examining e-form INC-29, finds that it is necessary to call for further information or finds such application or document to be defective or incomplete in any respect, he shall give intimation to the applicant to remove the defects and re-submit the e-form within fifteen days from the date of such intimation given by the Registrar.

(b) After the resubmission of the document, if the registrar still finds that the document is defective or incomplete in any respect, he shall give one more opportunity of fifteen days to remove such defects or deficiencies.

(c) In case, the Registrar is of the opinion that the document is defective or incomplete in any respect after giving such two opportunities, the e-form INC-29 of the proposed company shall be rejected.

(13) The Certificate of Incorporation shall be issued by the Registrar in Form No. INC-11.

(14) in Annexure, in Form No. INC-11, for the words, figures and brackets "and rule 8 of the Companies (Incorporation) Rules, 2014", the words, figures and brackets "and rule 18 of the Companies (Incorporation) Rules, 2014, shall be substituted.

(a) For Form No. INC-7, INC-10, INC-11 and INC-22 the Ministry substituted **Form INC-29**.

- The Link of the Notification is as follows:

http://www.mca.gov.in/Ministry/pdf/AmendmentRules_01052015.pdf

B. Rescinding of Notifications

- The Ministry of Corporate Affairs (MCA) vide Notification dated May, 18, 2015 rescinded the notifications of the Government of India, published in the Gazette of India, Extraordinary, Part II, Section (3), Sub-Section (i), vide number G.S.R 179 (E) Companies (Accounting Standards) Rules, 2011, dated the 3rd March, 2011 and G.S.R 650 (E), dated the 29th August 2011, with immediate effect, except as respects things done or omitted to be done before such rescission.

- The link of the Notification is as follows:

http://www.mca.gov.in/Ministry/pdf/Notification_21052015.pdf

C. The Companies (Amendment) Act, 2015

- The Ministry of Law and Justice issued The Companies (Amendment) Act, 2015 on 26th May, 2015.

- In section 2 of the Companies Act, 2013 (hereinafter referred to as the principal Act)—

- (1) "private company" means a company having a minimum paid-up share capital ~~of one lakh rupees or such higher paid-up share capital~~ **(Omitted)** as may be prescribed, and which by its articles,—

(i) restricts the right to transfer its shares;

(ii) except in case of One Person Company, limits the number of its members to two hundred:

- (2) “public company” means a company which—
- (a) is not a private company;
 - (b) has a minimum paid-up share capital ~~of five lakh rupees or such higher paid-up capital~~ **(Omitted)**, as may be prescribed:

Provided that a company which is a subsidiary of a company, not being a private company, shall be deemed to be public company for the purposes of this Act even where such subsidiary company continues to be a private company in its articles;

- In section 9 of the principal Act:

“From the date of incorporation mentioned in the certificate of incorporation, such subscribers to the memorandum and all other persons, as may, from time to time, become members of the company, shall be a body corporate by the name contained in the memorandum, capable of exercising all the functions of an incorporated company under this Act and having perpetual succession ~~and a common seal~~ **(Omitted)** with power to acquire, hold and dispose of property, both movable and immovable, tangible and intangible, to contract and to sue and be sued, by the said name.”

- Section 11 of the principal Act **omitted**.

Section 11-

“(1) A company having a share capital shall not commence any business or exercise any borrowing powers unless—

- (a) a declaration is filed by a director in such form and verified in such manner as may be prescribed, with the Registrar that every subscriber to the memorandum has paid the value of the shares agreed to be taken by him and the paid-up share capital of the company is not less than five lakh rupees in case of a public company and not less than one lakh rupees in case of a private company on the date of making of this declaration; and
- (b) the company has filed with the Registrar a verification of its registered office as provided in sub-section (2) of section 12.

(2) If any default is made in complying with the requirements of this section, the company shall be liable to a penalty which may extend to five thousand rupees and every officer who is in default shall be punishable with fine which may extend to one thousand rupees for every day during which the default continues.

(3) Where no declaration has been filed with the Registrar under clause (a) of subsection (1) within a period of one hundred and eighty days of the date of incorporation of the company and the Registrar has reasonable cause to believe that the company is not carrying on any business or operations, he may, without prejudice to the provisions of sub-section (2), initiate action for the removal of the name of the company from the register of companies under Chapter XVIII.”

- In section 12 of the principal Act, sub-section (3), clause (b) substituted:
~~(b) have its name engraved in legible characters on its seal;~~

Substituted

(b) have its name engraved in legible characters on its seal, **if any**;

- In section 22 of the principal Act,—
(i) in sub-section (2),—

(a)“A company may, by writing under its common seal *if any* **(inserted)**, authorize any person, either generally or in respect of any specified matters, as its attorney to execute other deeds on its behalf in any place either in or outside India.

(b) the following **proviso inserted**, namely:—

“Provided that in case a company does not have a common seal, the authorization under this sub-section shall be made by two directors or by a director and the Company Secretary, wherever the company has appointed a Company Secretary.”;

(ii) in sub-section (3),

A deed signed by such an attorney on behalf of the company and under his seal shall bind the company ~~and have the effect as if it were made under its common seal.~~ **(Omitted)**

- In section 46 of the principal Act, in sub-section (1),

A certificate “issued under the common seal, *if any*, of the company *or signed by two directors or by a director and the Company Secretary, wherever the company has appointed a Company Secretary* **(inserted)**, specifying the shares held by any person, shall be *prima facie* evidence of the title of the person to such shares.

- After section 76 of the principal Act, the following section **inserted**, namely:—

“76A. Where a company accepts or invites or allows or causes any other person to accept or invite on its behalf any deposit in contravention of the manner or the conditions prescribed under section 73 or section 76 or rules made there under or if a company fails to repay the deposit or part thereof or any interest due thereon within the time specified under section 73 or section 76 or rules made there under or such further time as may be allowed by the Tribunal under section 73,—

(a) the company shall, in addition to the payment of the amount of deposit or part thereof and the interest due, be punishable with fine which shall not be less than one crore rupees but which may extend to ten crore rupees; and

(b) every officer of the company who is in default shall be punishable with imprisonment which may extend to seven years or with fine which shall not be less than 25 lakh rupees but which may extend to two crore rupees, or with both:

Provided that if it is proved that the officer of the company who is in default, has contravened such provisions knowingly or willfully with the intention to deceive the company or its shareholders or depositors or creditors or tax authorities, he shall be liable for action under section 447.”

- In section 117 of the principal Act, in sub-section (3),—

The provisions of this section shall apply to—

(a) special resolutions;

(b) resolutions which have been agreed to by all the members of a company, but which, if not so agreed to, would not have been effective for their purpose unless they had been passed as special resolutions;

(c) any resolution of the Board of Directors of a company or agreement executed by a company, relating to the appointment, re-appointment or renewal of the appointment, or variation of the terms of appointment, of a managing director;

(d) resolutions or agreements which have been agreed to by any class of members but which, if not so agreed to, would not have been effective for their purpose unless they had been passed by a specified majority or otherwise in some particular manner; and all resolutions or agreements which effectively bind such class of members though not agreed to by all those members;

(e) resolutions passed by a company according consent to the exercise by its Board of Directors of any of the powers under clause (a) and clause (c) of sub-section (1) of section 180;

(f) resolutions requiring a company to be wound up voluntarily passed in pursuance of section 304;

(g) resolutions passed in pursuance of sub-section (3) of section 179; ~~and~~
(Omitted)

Proviso Inserted

Provided that no person shall be entitled under section 399 to inspect or obtain copies of such resolutions; and

(h) any other resolution or agreement as may be prescribed and placed in the public domain.

- In section 123 of the principal Act, in sub-section (1), after the third proviso, the following **proviso inserted**, namely:—

“Provided also that no company shall 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.”

- In section 124 of the principal Act, in sub-section (6),—

All shares in respect of which *dividend has not been paid or claimed for seven consecutive years or more shall be* **(substituted)** transferred by the company in the name of Investor Education and Protection Fund along with a statement containing such details as may be prescribed:

Provided that any claimant of shares transferred above shall be entitled to claim the transfer of shares from Investor Education and Protection Fund in accordance with such procedure and on submission of such documents as may be prescribed.

Explanation inserted

“Explanation.—For the removal of doubts, it is hereby clarified that in case any dividend is paid or claimed for any year during the said period of seven consecutive years, the share shall not be transferred to Investor Education and Protection Fund.”

- In section 134 of the principal Act, in sub-section (3), after clause (c), the following **clause inserted**, namely:—

“(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;”

- In section 143 of the principal Act, for sub-section (12), the following **sub-section substituted**, namely:—

“(12) Notwithstanding anything contained in this section, if an auditor of a company in the course of the performance of his duties as auditor, has reason to believe that an offence of fraud involving such amount or amounts as may be prescribed, is being or has been committed in the company by its officers or employees, the auditor shall report the matter to the Central Government within such time and in such manner as may be prescribed:

Provided that in case of a fraud involving lesser than the specified amount, the auditor shall report the matter to the audit committee constituted under section 177 or to the Board in other cases within such time and in such manner as may be prescribed:

Provided further that the companies, whose auditors have reported frauds under this sub-section to the audit committee or the Board but not reported to the Central Government, shall disclose the details about such frauds in the Board's report in such manner as may be prescribed.”

- In section 177 of the principal Act, in sub-section (4), in clause (iv), the following **proviso inserted**, namely:—

"Provided that the Audit Committee may make omnibus approval for related party transactions proposed to be entered into by the company subject to such conditions as may be prescribed;"

- In section 185 of the principal Act, in sub-section (1), in the proviso, after clause (b), the following clauses and **proviso inserted**, namely:—

"(c) any loan made by a holding company to its wholly owned subsidiary company or any guarantee given or security provided by a holding company in respect of any loan made to its wholly owned subsidiary company; or

(d) any guarantee given or security provided by a holding company in respect of loan made by any bank or financial institution to its subsidiary company:

Provided that the loans made under clauses (c) and (d) are utilized by the subsidiary company for its principal business activities."

- In section 188 of the principal Act,—
 - (a) in sub-section (1),—
 - (1) Except with the consent of the Board of Directors given by a resolution at a meeting of the Board and subject to such conditions as may be prescribed, no company shall enter into any contract or arrangement with a related party with respect to—
 - (a) sale, purchase or supply of any goods or materials;
 - (b) selling or otherwise disposing of, or buying, property of any kind;
 - (c) leasing of property of any kind;
 - (d) availing or rendering of any services;
 - (e) appointment of any agent for purchase or sale of goods, materials, services or property;
 - (f) such related party's appointment to any office or place of profit in the company, its subsidiary company or associate company; and
 - (g) underwriting the subscription of any securities or derivatives thereof, of the company;

Provided that no contract or arrangement, in the case of a company having a paid-up share capital of not less than such amount, or transactions not exceeding such sums, as may be prescribed, shall be entered into except with the prior approval of the company by a *special* **(Omitted)** resolution:

Provided further that no member of the company shall vote on such *special* **(Omitted)** resolution, to approve any contract or arrangement which may be entered into by the company, if such member is a related party:

Provided also that nothing in this sub-section shall apply to any transactions entered into by the company in its ordinary course of business other than transactions which are not on an arm's length basis.

Proviso Inserted

"Provided also that the requirement of passing the resolution under first proviso shall not be applicable for transactions entered into between a holding company and its wholly owned subsidiary whose accounts are consolidated with such holding company and placed before the shareholders at the general meeting for approval.";

(b) in sub-section (3)

Where any contract or arrangement is entered into by a director or any other employee, without obtaining the consent of the Board or approval by a *special* **(Omitted)** resolution in the general meeting under sub-section (1) and if it is not ratified by the Board or, as the case may be, by the shareholders at a meeting within three months from the date on which such contract or arrangement was entered into, such contract or arrangement shall be voidable at the option of the Board and if the contract or arrangement is with a related party to any director, or is authorized by any other director, the directors concerned shall indemnify the company against any loss incurred by it.

- In section 212 of the principal Act, in sub-section (6),

*"Notwithstanding anything contained in the Code of Criminal Procedure, 1973, ~~the offences covered under sub-sections (5) and (6) of section 7, section 34, section 36, subsection (1) of section 38, sub-section (5) of section 46, sub-section (7) of section 56, subsection (10) of section 66, sub-section (5) of section 140, sub-section (4) of section 206, section 213, section 229, sub-section (1) of section 251, sub-section (3) of section 339 and section 448 which attract the punishment for fraud provided in section 447 offence covered under section 447~~ **(Substituted)** of this Act shall be cognizable and no person accused of any offence under those sections shall be released on bail or on his own bond unless—"*

- In section 223 of the principal Act, in sub-section (4), in clause (a),

"The report of any inspector appointed under this Chapter shall be authenticated either—

*(a) by the seal of the company *if any* **(inserted)** whose affairs have been investigated; or*

(b) by a certificate of a public officer having the custody of the report, as provided under section 76 of the Indian Evidence Act, 1872, and such report shall be admissible in any legal proceeding as evidence in relation to any matter contained in the report.”

- In section 248 of the principal Act, in sub-section (1),—

“(a) a company has failed to commence its business within one year of its Incorporation *or* **(Inserted)**;

(b) the subscribers to the memorandum have not paid the subscription which they had undertaken to pay within a period of one hundred and eighty days from the date of incorporation of a company and a declaration under sub-section (1) of section 11 to this effect has not been filed within one hundred and eighty days of its incorporation; or (Omitted)”

- In section 419 of the principal Act, in sub-section (4);

The President shall, for the disposal of any case relating to rehabilitation, restructuring, reviving *or winding-up* **(Omitted)**, of companies, constitute one or more Special Benches consisting of three or more Members, majority necessarily being of Judicial Members.

- In section 435 of the principal Act, in sub-section (1),—

(1) The Central Government may, for the purpose of providing speedy *trial of offences under this Act* *trial of offences punishable under this Act with imprisonment of two years or more* **(Substituted)**, by notification, establish or designate as many Special Courts as may be necessary.

Proviso inserted

"Provided that all other offences shall be tried, as the case may be, by a Metropolitan Magistrate or a Judicial Magistrate of the First Class having jurisdiction to try any offence under this Act or under any previous company law."

- In section 436 of the principal Act, in sub-section (1), in clause (a)

(a) *all offences under this Act* *all offences specified under sub-section (1) of section 435* **(Substituted)** shall be triable only by the Special Court established for the area in which the registered office of the company in relation to which the offence is committed or where there are more Special Courts than one for such area, by such one of them as may be specified in this behalf by the High Court concerned;

- In section 462 of the principal Act, for sub-section (2), the following sub-sections shall be substituted, namely:—

“(2) A copy of every notification proposed to be issued under sub-section (1), shall be laid in draft before each House of Parliament, while it is in session, for a total period of thirty days, and if, both Houses agree in disapproving the issue of notification or both Houses agree in making any modification in the notification, the notification shall not be issued or, as the case may be, shall be issued only in such modified form as may be agreed upon by both the Houses.

(3) In reckoning any such period of thirty days as is referred to in sub-section (2), no account shall be taken of any period during which the House referred to in subsection (2) is prorogued or adjourned for more than four consecutive days.

(4) The copies of every notification issued under this section shall, as soon as may be after it has been issued, be laid before each House of Parliament.”

- The Link of the same is:
http://www.mca.gov.in/Ministry/pdf/AmendmentAct_2015.pdf
- The Central Government appointed the 29th May, 2015 as the date on which the provisions of sections 1 to 12 and 15 to 23 of the said Act shall come into force.(Link: http://www.mca.gov.in/Ministry/pdf/Notification_31052015.pdf)

D. Companies (Declaration and Payment of Dividend) Second Amendment Rules, 2015

- The Ministry vide notification dated 29th May, 2015 issued the Companies (Declaration and Payment of Dividend) Second Amendment Rules, 2015 to further amend the Companies (Declaration and Payment of Dividend) Rules, 2014.
- In the Companies (Declaration and Payment of Dividend) Rules, 2014 in rule 3, sub-rule (5) was omitted.

Rule 3 Sub rule (5)

No company shall declare dividend unless carried over previous losses and depreciation not provided in previous year are set off against profit of the company of the current year the loss or depreciation, whichever is less, in previous years is set off against the profit of the company for the year for which dividend is declared or paid.

- The Link of the same is:
http://www.mca.gov.in/Ministry/pdf/Rules_31052015_2.pdf

E. Companies (Incorporation) Second Amendment Rules 2015.

- The Ministry vide notification dated May 29, 2015 issued the Companies (Incorporation) Second Amendment Rules, 2015 to further amend the Companies (Incorporation) Rules, 2014.
- In Rule 12 the following proviso was inserted:
“Provided that in case pursuing of any of the objects of a company requires registration or approval from sectoral regulators such as Reserve Bank of India, Securities and Exchange Board, registration or approval, as the case may be, from such regulator shall be obtained by the Company before pursuing such objects and a declaration in this behalf shall be submitted at the stage of incorporation of the company.”;
- Rule 24 to be **omitted**
Rule 24
Declaration at the time of commencement of business.-
The declaration filed by a director shall be in Form No.INC.21 along with the fee as and the contents of the form shall be verified by a Company Secretary in practice or a Chartered Accountant or a Cost Accountant in practice:

Provided that in the case of a company requiring registration from sectoral regulators such as Reserve Bank of India, Securities and Exchange Board of India etc, the approval from such regulator shall be required.
- Form INC-13(Memorandum of Association) and Form INC-16 (License under section 8(1) of the Companies Act 2013 were substituted with new forms.
- The Link of the same is:
http://www.mca.gov.in/Ministry/pdf/Rules_31052015_3.pdf

F. Companies (Registration of Charges) Amendment Rules, 2015.

- The Ministry vide notification dated May 29, 2015 issued the Companies (Registration of Charges) Amendment Rules, 2015 further to amend the Companies (Registration of Charges) Rules, 2014.
- In the Companies (Registration of Charges) Rules, 2014, in rule 3, in sub-rule (4), in clause (a)

(4) A copy of every instrument evidencing any creation or modification of charge and required to be filed with the Registrar in pursuance of section 77, 78 or 79 shall be verified as follows-

(a) where the instrument or deed relates solely to the property situated outside India, the copy shall be verified by a certificate issued either under the seal, *if any, (inserted)* of the company, or under the hand of any director or company secretary of the company or an authorised officer of the charge holder or under the hand of some person other than the company who is interested in the mortgage or charge;

- The Link of the same is:
http://www.mca.gov.in/Ministry/pdf/Rules_31052015_4.pdf

G. Companies (Registration Offices and Fees) Second Amendment Rules, 2015

- The Ministry vide notification dated May 29, 2015 issued the Companies (Registration Offices and Fees) Second Amendment Rules, 2015 further to amend the Companies (Registration Offices and Fees) Rules, 2014.
- In the Companies (Registration Offices and Fees) Rules, 2014, in rule 15, the following proviso was **inserted**:

“Provided that no person shall be entitled under section 399 to inspect or obtain copies of resolutions referred to in clause (g) of sub-section (3) of section 117 of the Act.”

- The Link of the same is:
http://www.mca.gov.in/Ministry/pdf/Rules_31052015_5.pdf

H. Companies (Share Capital and Debentures) Second Amendment Rules, 2015.

- The Ministry vide notification dated May 29, 2015 issued the Companies (Share Capital and Debentures) Second Amendment Rules, 2015 further to amend the Companies (Share Capital and Debentures) Rules, 2014.
- in rule 5, in sub-rule (3),
“Every share certificate shall be issued under the seal, *if any, (inserted)* of the company, which shall be affixed in the presence of, and signed by-“
- clause (b) substituted as:

"(b) the secretary or any person authorised by the Board for the purpose:

Provided that in case a company does not have a common seal, the share certificate shall be signed by two directors or by a director and the Company Secretary wherever the company has appointed a Company Secretary:

Provided further that, if the composition of the Board permits of it, at least one of the aforesaid two directors shall be a person other than a managing director or a whole-time director:

Provided also that, in case of a One Person Company, every share certificate shall be issued under the seal, if any, of the company, which shall be affixed in the presence of and signed by one director or a person authorised by the Board of Directors of the company for the purpose and the Company Secretary, or any other person authorised by the Board for the purpose, and in case the One Person Company does not have a common seal, the share certificate shall be signed by the persons in the presence of whom the seal is required to be affixed in this proviso."

- The Link of the same is:
http://www.mca.gov.in/Ministry/pdf/Rules_31052015_1.pdf





RBI UPDATES:

A. Resolution period for BIFR/CDR/JLF cases

- The Reserve Bank of India (RBI) vide Circular No.588 dated May 7, 2015 issued guidelines in reference to “The Securitization Companies and Reconstruction Companies (Reserve Bank) Guidelines and Directions, 2003 dated April 23, 2003 (herein after called “the directions”) and circular DNBS.PD.CC.No. 39/SCRC/26.03.001/2014-15 dated July 01, 2014.
- It was observed that in terms of RBI Guidelines (sub- para 7(6) (ii) and (iii) of Master Circular dated July 1, 2014), the maximum resolution period permitted to SCs/RCs for realization of stressed assets acquired by them is 8 years. However, in most cases of restructuring proposals of stressed assets, as approved by BIFR / CDR / JLF, the repayment period goes beyond a time frame of 8 years. In such cases, SCs/RCs, who are holding a part of the stressed assets, express their inability to go along with the other lenders beyond 8 years due to the regulatory constraints mentioned above and insist on an exit at the end of 5 or 8 years, thereby jeopardizing the restructuring efforts of the majority lenders.
- It was therefore decided to make certain modifications to the existing Directions as under:
 - (1) For the purpose of the restructuring proposals approved / to be approved by BIFR/CDR/JLF, SC/RCs shall be permitted to accept a resolution period co-terminus with other secured lenders.
 - (2) In all such cases, the redemption period of Security Receipts (SRs) held against these assets may be extended to be in congruence with the resolution period approved by BIFR/CDR/JLF, subject to the Independent Credit Rating Agencies continuing to positively rate these SRs, i.e. as long as the Net Asset Value of the SRs continue to be positive.
 - (3) For the purpose of the above sub-paragraphs (1) and (2), the period of realization stipulated under clauses (ii) and (iii) of sub-paragraph (6) of paragraph 7 of the directions shall not be applicable.

- A notification DNBR(PD-SC/RC).No.02/CGM(CDS)/2014-2015 dated May 07, 2015, amending 'The Securitisation Companies and Reconstruction Companies (Reserve Bank) Guidelines and Directions,2003' was enclosed with the Circular.

- The link for the same is as follows:

<http://rbidocs.rbi.org.in/rdocs/notification/PDFs/588CR776646392CF34383A14E73FA56F465BB.PDF>

B. Setting up Guidelines on Sale of financial assets to Securitization Company (SC)/ Reconstruction Company (RC) - Reversal of excess provision on sale of NPAs to SC/RC

- The Reserve Bank of India (RBI) vide Circular No.593 dated May 14, 2015 issued circular with reference to para 5 (A) of circular [UBD.BPD \(PCB\).Cir. No.53/13.05.000/2013-14](#) dated March 28, 2014 wherein it was stipulated that if the sale is for a value higher than the Net Book Value (NBV), the excess provision will not be reversed, but will be utilised to meet the shortfall/loss on account of sale of other financial assets.
- It was now been decided to permit Multi-State Urban Cooperative Banks to reverse to P&L account the excess provision when the sale is for a value higher than the NBV on sale of NPAs to their profit and loss account. However, banks can reverse excess provision arising out of sale of NPAs only when the cash received (by way of initial consideration and/or redemption of security receipt /pass through certificates) is higher than the NBV of the NPAs sold to SCs/RCs. Further, the quantum of excess provision reversed to profit and loss account will be limited to the extent of which cash exceeds the NBV of the NPAs sold.
- The quantum of excess provision reversed to the Profit and Loss account on account of sale of NPAs shall be disclosed in the financial statements of the bank under "Notes to Account".
- The link for the same is as follows:
<http://rbidocs.rbi.org.in/rdocs/notification/PDFs/CR593F4CB079B8F9D4D18AB10083D129E6338.PDF>

C. Ready Forward Contracts in Corporate Debt Securities

- The Reserve Bank of India (RBI) vide Circular No.595 dated May 14, 2015 invited attention to Circular FMRD.[DIRD.04/14.03.002/2014-15](#) dated [February 3, 2015](#) enclosing the Repo in Corporate Debt Securities (Reserve Bank) Directions, 2015.
- As indicated under paragraph 4 of the above Directions, the following entities were eligible to enter into ready forward contracts in corporate debt securities:
 - i. Any scheduled commercial bank excluding RRBs and LABs;
 - ii. Any Primary Dealer authorised by the Reserve Bank of India;

- iii. Any non-banking financial company registered with the Reserve Bank of India (other than Government companies as defined in sub-section (45) of section 2 of the Companies Act, 2013);
 - iv. All-India Financial Institutions, namely, Exim Bank, NABARD, NHB and SIDBI;
 - v. India Infrastructure Finance Company Limited (IIFCL);
 - vi. Any scheduled urban cooperative bank subject to adherence to conditions prescribed by Reserve Bank of India;
 - vii. Other regulated entities, subject to the approval of the regulators concerned, viz.,
 - a) Any mutual fund registered with the Securities and Exchange Board of India;
 - b) Any housing finance company registered with the National Housing Bank; and
 - c) Any insurance company registered with the Insurance Regulatory and Development Authority.
 - viii. Any other entity specifically permitted by the Reserve Bank.
- It was now decided to permit NBFCs registered with RBI including Government companies as defined in sub-section (45) of section 2 of the Companies Act, 2013 which adhere to the prudential norms prescribed for NBFCs by the Department of Non-Banking Regulation, Reserve Bank of India, to undertake ready forward contracts in corporate debt securities.
 - The directions (Repo in Corporate Debt Securities (Amendment) Directions 2015) issued in this regard vide FMRD.DIRD.07/14.03.002/2014-15 dated May 14, 2015 were enclosed with the circular. ***The modifications shall be deemed to be effective from May 14, 2015.***
 - The link for the same is as follows:
<http://rbidocs.rbi.org.in/rdocs/notification/PDFs/CR5952890C4F94DAB48389C2443088A80E6DD.PDF>

D. Export of Goods and Services- Declaration of Exports of Goods/Software

- The Reserve Bank of India (RBI) vide Circular No. 599 dated May 14, 2015 invited attention of the Authorised Dealers to Regulation 6 of the Notification No.FEMA 23/2000-RB dated May 3, 2000 viz. Foreign Exchange Management (Export of Goods and Services) Regulations, 2000, as amended from time to time, in terms of which every exporter of goods or software has to declare the same in one of the forms stated therein.
- To further liberalise and simplify the procedure, it was decided to dispense with the requirement of declaring the export of Goods /Software in the SDF in case of exports taking place through the EDI ports, as the mandatory statutory requirements contained in the SDF have been subsumed in the Shipping Bill format.

- The directions contained in this circular were issued under Section 10(4) and Section 11(1) of the FEMA, 1999 (42 of 1999) and are without prejudice to permissions / approvals, if any, required under any other law.
- The link for the same is as follows:
<http://rbidocs.rbi.org.in/rdocs/notification/PDFs/599AP08536B55FA4244A089994E3A08DCE23B.PDF>

E. External Commercial Borrowings (ECB) denominated in Indian Rupees (INR) – Mobilisation of INR

- The Reserve Bank of India (RBI) issued Circular No.103 dated May 21, 2015 for inviting attention of Authorized Dealers Category – I (AD Cat – I) banks to the Foreign Exchange Management (Foreign Exchange Derivative Contracts) Regulations, 2000 dated May 3, 2000 [Notification No. FEMA 25/RB-2000 dated May 3, 2000], as amended from time to time, A.P. (DIR Series) Circular No.63 dated December 29, 2011 and A.P. (DIR Series) Circular No. 25 dated September 3, 2014.
- In terms of A.P. (DIR Series) Circular No. 25 dated September 3, 2014, recognised non-resident ECB lenders may extend loans in Indian Rupees subject to, *inter alia*, the lender mobilising Indian Rupees through a swap undertaken with an AD Cat-I bank in India. To facilitate ECB lending denominated in INR by overseas lenders, it has now been decided that such lenders may enter into swap transactions with their overseas bank which shall, in turn, enter into a back-to-back swap transaction with any AD Cat-I bank in India as per the procedure given below:
 - (i) The recognised non-resident lender approaches his overseas bank with appropriate documentation as evidence of an underlying ECB denominated in INR with a request for a swap rate for mobilising INR for onward lending to the Indian borrower.
 - (ii) The overseas bank, in turn, approaches an AD Cat-I bank for a swap rate along with documentation furnished by the customer that will enable the AD bank in India to satisfy itself that there is an underlying ECB in INR (scanned copies would be acceptable).
 - (iii) A KYC certification on the end client shall also be taken by the AD bank in India as a one-time document from the overseas bank.
 - (iv) Based on the documents received from the overseas bank, the AD bank in India should satisfy itself about the existence of the underlying ECB in INR and offer an indicative swap rate to the overseas bank which, in turn, will offer the same to the non-resident lender on a back-to-back basis.
 - (v) The continuation of the swap shall be subject to the existence of the underlying ECB at all times.

(vi) On the due date, settlement may be done through the Vostro account of the overseas bank maintained with its counterparty bank in India.

(vii) All other Operational Guidelines, Terms and Conditions as contained in the annex to A.P. (DIR Series) Circular No.63 dated December 29, 2011 governing hedging of ECBs denominated in INR shall apply, *mutatis mutandis*.

(viii) The concerned AD Cat-I bank shall keep on record all related documentation for verification by Reserve Bank.

➤ The link for the same is as follows:

<http://rbidocs.rbi.org.in/rdocs/notification/PDFs/103CA5A9BFAFDC844F78AE7E77C1BA16809.PDF>





SEBI UPDATES:

A. SECURITIES AND EXCHANGE BOARD OF INDIA (ISSUE OF CAPITAL AND DISCLOSURE REQUIREMENTS) (SECOND AMENDMENT) REGULATIONS, 2015

- SEBI vide notification dated May 05, 2015 issued the following regulations to further amend the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2009, namely:-
- In the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2009, in regulation 70, after sub-regulation (4), the following shall be inserted, namely, -

“(5) Conversion of debt into equity under strategic debt restructuring scheme -The provisions of this Chapter shall not apply where the preferential issue of equity shares is made to the consortium of banks and financial institutions pursuant to conversion of their debt, as part of the strategic debt restructuring scheme in accordance with the guidelines specified by the Reserve Bank of India, subject to the following conditions:

(a) conversion price shall be determined in accordance with the guidelines specified by the Reserve Bank of India for strategic debt restructuring scheme, which shall not be less than the face value of the equity shares;

(b) conversion price shall be certified by two independent qualified valuers, and for this purpose 'valuer' shall have the same meaning as assigned to it under clause (r) of sub-regulation (1) of regulation 2 of the Securities and Exchange Board of India (Issue of Sweat Equity) Regulations, 2002;

(c) equity shares so allotted shall be locked-in for a period of one year from the date of trading approval: Provided that for the purposes of transferring the control, the consortium of banks and financial institutions may transfer their shareholding to an entity before completion of the lock-in period subject to continuation of the lock-in on such shares for the remaining period with the transferee;

(d) applicable provisions of Companies Act, 2013 are complied with, including the requirement of special resolution.

(6) The provisions of this Chapter shall not apply when any other secured lenders opt to join the strategic debt restructuring scheme in accordance with the guidelines specified by the Reserve Bank of India and convert their debt into equity share in accordance with sub-regulation (5). "

- The link of the Circular is as below:

http://www.sebi.gov.in/cms/sebi_data/attachdocs/1430885855266.pdf

B. SECURITIES AND EXCHANGE BOARD OF INDIA (SUBSTANTIAL ACQUISITION OF SHARES AND TAKEOVERS) (SECOND AMENDMENT) REGULATIONS, 2015

- SEBI vide notification dated May 5, 2015 made the following Regulations to amend the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011, namely:-

- In the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 in regulation 10, after clause (h) of sub-regulation (1) the following inserted namely:-

" (i) Conversion of debt into equity under Strategic Debt Restructuring Scheme - Acquisition of equity shares by the consortium of banks, financial institutions and other secured lenders pursuant to conversion of their debt as part of the Strategic Debt Restructuring Scheme in accordance with the guidelines specified by the Reserve Bank of India:"

- The link of the same is as below:

http://www.sebi.gov.in/cms/sebi_data/attachdocs/1430885990682.pdf

C. Master Circular for Depositories

- SEBI issued Master Circular for Depositories dated May 7, 2015.

- The link of the same is as below:

http://www.sebi.gov.in/cms/sebi_data/attachdocs/1430992306107.pdf

D. Disclosures under SEBI (Prohibition of Insider Trading) Regulations, 2015

- SEBI vide circular No. 01 dated May 11, 2015 issued in exercise of the powers conferred under Section 11 (1) of the Securities and Exchange Board of India Act 1992 and under regulations 4(3) and 11 of the Regulations and, to protect the interests of investors in securities and to promote the development of, and to regulate the securities market.
- With reference to the requirements of regulation 6 of SEBI (Prohibition of Insider trading) Regulations 2015 (“the Regulations”),:-
 - i. Formats for disclosures were Annexed.
 - ii. Such disclosures may be maintained by the company in physical/electronic mode.
- With reference to the requirements of the regulation 8 (Code of Fair Disclosure) and regulation 9 (Code of Conduct) of the Regulations, the companies shall also ensure that:
 - i. Formulated and published (on its official website), code of practices and procedures for fair disclosure of Unpublished Price Sensitive Information (UPSI) is confirmed to the stock exchanges, immediately.
 - ii. Formulated code of conduct is confirmed to the stock exchanges, immediately.
 - iii. a company deals with only such market intermediary / every other person, who is required to handle UPSI, who have formulated a code of conduct as per the requirements of the Regulations.
- The Stock Exchanges were advised to:
 - a. Put in place the adequate systems and issue the necessary guidelines for implementing the above decision.
 - b. Make necessary amendments to the relevant bye-laws, rules and regulations as applicable for the implementation of the above decision immediately.
 - c. Bring the provisions of this circular to the notice of the listed companies/issuers and also to disseminate the same on the website immediately.
- The link of the Circular is as below:
http://www.sebi.gov.in/cms/sebi_data/attachdocs/1431337589072.pdf

E. Master Circular for Stock Exchange and Clearing Corporation

- SEBI issued Master Circular for Stock Exchange and Clearing Corporation dated May 26, 2015.
- The link of the Circular is as below:
http://www.sebi.gov.in/cms/sebi_data/attachdocs/1432638310942.pdf

F. Securities And Exchange Board Of India (Mutual Funds) (Amendment) Regulations, 2015

- SEBI vide notification dated May 15, 2015 made Securities And Exchange Board Of India (Mutual Funds) (Amendment) Regulations, 2015 to further amend the Securities and Exchange Board of India (Mutual Funds) Regulations, 1996, namely:
- The link of the same is as below:
http://www.sebi.gov.in/cms/sebi_data/attachdocs/1432097602940.pdf





DIPP UPDATES:

A. Consolidated FDI Policy

- The Department of Industrial Policy and Promotion issued the Consolidated FDI Policy circular effective from May 12, 2015.
- It was clarified that the present consolidation subsumes and supersedes all Press Notes/Press Releases/Clarifications/Circulars issued by DIPP, which were in force as on May 11, 2015 and reflects the FDI Policy as on May 12, 2015. However, Press Note 4 of 2015, dated April 24, 2015, regarding policy on foreign investment in pension sector, will remain effective. This Circular accordingly will take effect from May 12, 2015 and will remain in force until superseded in totality or in part thereof. Reference to any statute or legislation made in this Circular shall include modifications, amendments or re-enactments thereof.
- The Link of the same is:
http://dipp.nic.in/English/Policies/FDI_Circular_2015.pdf

ARTICLE OF THE MONTH

SECRETARIAL STANDARD ON GENERAL MEETINGS OF MEMBERS (SS-2) Notified w.e.f. 01st July 2015

The Institute of Company Secretaries of India is the first Institute in the world to issue Secretarial Standards (SS). Secretarial Standard is mandatory as per the provisions of Section 118 (10) of the Companies Act, 2013. The same will be made effective from **1st July 2015**.

The Secretarial Standard have the potential to create enormous confidence in minds of investor and various stakeholders and will ensure good corporate governance.

The Secretarial Standard 2 (SS-2) is applicable to all types of General Meetings of Members of all companies incorporated under the Act (as on date approx 8 Lac Companies) except One Person Company (OPC) and class or classes of companies which are exempted by the Central Government through notification. The principles enunciated in this Standard for General Meetings of Members are applicable mutatis-mutandis to Meetings of debenture-holders and creditors.

1. AUTHORITY:

➤ **A General Meeting shall be convened by or on the authority of the Board.**

The Board shall, **every year**, convene or authorize convening of a Meeting of its Members called the **Annual General Meeting** to transact items of Ordinary Business specifically required to be transacted at an Annual General Meeting as well as Special Business, if any. If the Board fails to convene its Annual General Meeting in any year, any Member of the Company may approach the prescribed authority, which may then direct the calling of the Annual General Meeting of the company.

➤ The **Board may also**, whenever it deems fit, call an **Extra-ordinary General Meeting** of the Company.

➤ The Board shall, on the requisition of Members who hold, as on the date of the receipt of a valid requisition,

(a) in the case of Company having a share capital, **not less than 1/10** of the paid-up share capital carrying Voting Rights.

OR

(b) in the case of a Company not having share capital, **not less than 1/10** of total voting power of the Company,

call an Extra-ordinary General Meeting of the Company.

2. NOTICE:

➤ Notice in writing of every Meeting shall be given to :

1. Every Member of the Company.

2. Every Directors and Auditors of the Company,

3. Secretarial Auditor,

4. Debenture Trustees, if any, and, wherever applicable or so required, to other specified persons.

- In the case of Members, Notice shall be given at the address registered with the Company or depository.
 - In the case of shares or other securities held jointly by two or more persons, the Notice shall be given to the person whose name appears first as per records of the Company or the depository, as the case may be.
 - In the case of any other person who is entitled to receive Notice, the same shall be given to such person at the address provided by him.
 - Where the company has received intimation of death of a Member, the Notice of Meeting shall be sent as under:
 - In the absence of a Nominee, the Notice shall be sent to the legal representative of the deceased Member.
 - In case of insolvency of a Member, the Notice shall be sent to the assignee of the insolvent Member.
 - In case the Member is a company or body corporate which is being wound up, Notice shall be sent to the liquidator.
- **Notice shall be sent by hand or by ordinary post or by speed post or by registered post or by courier or by facsimile or by e-mail or by any other electronic means.**
- “**Electronic means**” means any communication sent by a Company through its authorised and secured computer programme which is capable of producing confirmation and keeping record of such communication addressed to the person entitled to receive such communication at the last electronic mail address provided by the Member.
- In case the Notice and accompanying documents are given by e-mail, these shall be sent at the Members’ e-mail addresses, registered with the Company or provided by the depository as may be prescribed by the Act. Company shall ensure that it uses a system which produces confirmation of the total number of recipients e-mailed and a record of each recipient to whom the Notice has been sent and copy of such record and any Notices of any failed transmissions and subsequent resending shall be retained by or on behalf of the Company as “proof of sending”.
- Notice shall be sent to Members by registered post or speed post or courier or e-mail and not by ordinary post in the following cases:
- (a) if the Company provides the facility of e-voting ;
 - (b) if the item of business is being transacted through postal ballot;

- In case of Companies having a website, the Notice shall be hosted on the website.

Notice shall specify the day, date, time and full address of the venue of the Meeting.

- Notice shall contain complete particulars of the venue of the Meeting including route map and prominent land mark for easy location. In case of Companies having a website, the route map shall be hosted along with the Notice on the website.
- Meetings shall be called **during business hours i.e. between 9 a.m. and 6 p.m.** on a day that is not a **National Holiday**. A Meeting called by the requisitionists shall be convened only on a working day.

Explanation: “National Holiday” includes Republic Day i.e. 26th January, Independence Day i.e. 15th August, Gandhi Jayanti i.e. 2nd October and such other day as may be declared as National Holiday by the Central Government.

- Annual General Meetings and meeting by requisitionists 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 situated. Whereas other General Meetings may be held at any place within India.
- Notice shall clearly specify the nature of the Meeting and the business to be transacted thereat. In respect of items of Special Business, each such item shall be in the form of a Resolution and shall be accompanied by an explanatory statement which shall set out all such facts as would enable a Member to understand the meaning, scope and implications of the item of business and to take a decision thereon. **In respect of items of Ordinary Business, Resolutions are not required to be stated in the Notice except where the Auditors or Directors to be appointed are other than the retiring Auditors or Directors.**
- The explanatory statement shall include :
 - a) the **nature of the concern or interest** (financial or otherwise), if any, of the following persons, in any special item of business or in a proposed Resolution, shall be disclosed in the explanatory statement:
 - (a) Directors and Manager,
 - (b) Other Key Managerial Personnel; and
 - (c) Relatives of the persons mentioned above.
 - b) In case any item of **Special Business** to be transacted at a Meeting of the Company relates to or affects any other Company, the extent of shareholding interest in that other Company of every Promoter, Director, Manager, and of every other Key Managerial Personnel of the first mentioned Company shall, if the extent of such shareholding is not less than two percent of the paid-up share capital of that Company, also be stated in the explanatory statement.

- c) Where reference is made to any document, contract, agreement, the Memorandum of Association or Articles of Association, the relevant explanatory statement shall state that such **documents are available for inspection** and such documents shall be so made available for inspection in physical or in electronic form during specified business hours at the Registered Office of the Company and copies thereof shall also be made available for inspection in physical or electronic form at the Head Office as well as Corporate Office of the company, if any, if such office is situated elsewhere, and also at the Meeting.
- d) In cases relating to the **appointment or re-appointment** and/or fixation of remuneration of Directors including Managing Director or Executive Director or Whole - time Director or of Manager or variation of the terms of remuneration, details of each such Director or Manager, including age, qualifications, experience, terms and conditions of appointment or re-appointment along with details of remuneration sought to be paid and the remuneration last drawn by such person, if applicable, date of first appointment on the Board, shareholding in the Company, relationship with other Directors, Manager and other Key Managerial Personnel of the Company, the number of Meetings of the Board attended during the year and other Directorships, Membership/ Chairmanship of Committees of other Boards shall be given in the explanatory statement.
- e) In case of appointment of **Independent Directors**, the justification for choosing the appointees for appointment as Independent Directors shall be disclosed and in case of re-appointment of Independent Directors, performance evaluation report of such Director or summary thereof shall be included in the explanatory statement.
- Notice and accompanying documents **shall be given at least 21 clear days in advance of the Meeting**. For the purpose of reckoning 21 days clear Notice, the day of sending the Notice and the day of Meeting shall not be counted. Further in case the Company sends the Notice by post or courier, an additional 2 days shall be provided for the service of Notice.

In case a valid **Special Notice** under the Act has been received from Member(s), the Company shall give Notice of the Resolution to all its Members **at least seven days** before the Meeting, exclusive of the day of dispatch of Notice and day of the Meeting, in the same manner as a Notice of any General Meeting is to be given.

Where this is not practicable, the Notice shall be published in a **vernacular newspaper** in the principal vernacular language of the district in which the registered office of the Company is situated, and in an **English newspaper in English language**, both having a wide circulation in that district, at least **seven days before the Meeting**, exclusive of the day of publication of the Notice and day of the Meeting. In case of Companies having a website, such **Notice shall also be hosted on the website**.

- Notice and accompanying documents may be given at a **shorter period of time** if consent in writing is given thereto, by physical or electronic means, **by not less than 95% of the Members entitled to vote at such Meeting**.

No business shall be transacted at a Meeting if Notice in accordance with this Standard has not been given. No items of business other than those specified in the Notice and those specifically permitted under the Act shall be taken up at the Meeting.

- *Notice shall be accompanied, by an attendance slip and a Proxy form (MGT-11) with clear instructions for filling, stamping, signing and/or depositing the Proxy form. A Meeting convened upon due Notice shall not be postponed or cancelled.*

3. FREQUENCY OF MEETINGS:

- **Annual General Meeting** - Every Company shall, in each Calendar Year, hold a General Meeting called the Annual General Meeting.
 - i) *Every Company shall hold its 1st Annual General Meeting within 9 months from the date of closing of the first financial year of the Company and thereafter in each Calendar Year within six months of the close of the financial year, with an interval of not more than 15 months between two successive Annual General Meetings.*
 - ii) *The aforesaid period of 6 months or interval of 15 months may be extended by a period not exceeding 3 months with the prior approval of the Registrar of Companies, in case of any Annual General Meeting other than the first Annual General Meeting. 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 Calendar Year of its incorporation.*
- **Extra-Ordinary General Meeting** - Items of business other than Ordinary Business may be considered at an Extra-Ordinary General Meeting or by means of a postal ballot, if thought fit by the Board.

4. QUORUM:

- **Quorum shall be present throughout the Meeting.**

The Quorum for a General Meeting shall be as follows unless the Articles provide for a larger number:

1. in case of a public company:

- (i) 5 Members personally present if the number of Members as on the date of Meeting is not more than 1000;
- (ii) 15 Members personally present if the number of Members as on the date of Meeting is more than 1000 but up to 5000;
- (iii) 30 Members personally present if the number of Members as on the date of the Meeting exceeds 5000;

2. in the case of a private company: 2 Members personally present.

- Where the Quorum provided in the Articles is higher than that provided under the Act, the Quorum shall conform to such higher requirement. **Members need to be personally present at a Meeting to constitute the Quorum. Proxies shall be excluded for determining the Quorum. A duly authorised representative of a body corporate or the representative of the President of India or the Governor of a State is deemed to be a Member personally present and enjoys all the rights of a Member present in person.**

5. PRESENCE OF DIRECTORS AND AUDITORS:

- **Directors:** If any Director is unable to attend the Meeting, the Chairman shall explain such absence at the Meeting. Director who attend General Meetings of the company and the Company Secretary shall be seated with the Chairman.
- **Auditors:** The Auditors, unless exempted by the Company, shall, either by themselves or through their authorised representative, attend the General Meetings of the Company and shall have the right to be heard at such Meetings on that part of the business which concerns them as Auditors.
- **Secretarial Auditor:** The Secretarial Auditor, unless exempted by the Company shall, either by himself or through his authorised representative, attend the Annual General Meeting and shall have the right to be heard at such Meeting on that part of the business which concerns him as Secretarial Auditor. The authorised representative who attends the General Meeting of the Company shall also be qualified to be a Secretarial Auditor.

6. CHAIRMAN:

- **Appointment:** The Chairman of the Board shall take the chair and conduct the Meeting. If the Chairman is not present within 15 minutes after the time appointed for holding the Meeting, or if he is unwilling to act as Chairman of the Meeting, or if no Director has been so designated, the Directors present at the Meeting shall elect one of themselves to be the Chairman of the Meeting. If no Director is present within 15 Minutes after the time appointed for holding the Meeting, or if no Director is willing to take the chair, the Members present shall elect, on a show of hands, one of themselves to be the Chairman of the Meeting, unless otherwise provided in the Articles.
- The Chairman shall explain the objective and implications of the Resolutions before they are put to vote at the Meeting. The Chairman shall provide a fair opportunity to Members who are entitled to vote to seek clarifications and/or offer comments related to any item of business and address the same, as warranted.

- In case of public Companies, the Chairman shall not propose any Resolution in which he is deemed to be concerned or interested nor shall he conduct the proceedings for that item of business. If the Chairman is interested in any item of business, without prejudice to his Voting Rights on Resolutions, he shall entrust the conduct of the proceedings in respect of such item to any dis-interested Director or to a Member, with the consent of the Members present, and resume the Chair after that item of business has been transacted.

7. **PROXIES:**

- **Right to Appoint:**

A Member entitled to attend and vote is entitled to appoint a Proxy, or where that is allowed, one or more proxies, to attend and vote instead of himself and a Proxy need not be a Member.

A Proxy can act on behalf of Members not exceeding fifty and holding in the aggregate not more than ten percent of the total share capital of the Company carrying Voting Rights. However a Member holding more than ten percent of the total share capital of the Company carrying Voting Rights may appoint a single person as Proxy for his entire shareholding and such person shall not act as a Proxy for another person or shareholder.

- **Form of Proxy:**

An instrument appointing a Proxy shall be either in the Form specified in the Articles or in the Form set out in the Act. The instrument of Proxy shall be signed by the appointer or his attorney duly authorised in writing, or if the appointer is a body corporate, be under its seal or be signed by an officer or an attorney duly authorised by it. An instrument of Proxy duly filled, stamped and signed, is valid only for the Meeting to which it relates including any adjournment thereof.

- **Stamping of Proxies:**

An instrument of Proxy is valid only if it is properly stamped as per the applicable law. Unstamped or inadequately stamped Proxies or Proxies upon which the stamps have not been cancelled are invalid.

- **Execution of Proxies:**

The Proxy-holder shall prove his identity at the time of attending the Meeting. An authorised representative of a body corporate or of the President of India or of the Governor of a State, holding shares in a Company, may appoint a Proxy under his signature.

- **Validity of Proxies:**

- A Proxy form which does not state the name of the Proxy shall not be considered valid.
- Undated Proxy shall not be considered valid.
- If a company receives multiple Proxies for the same holdings of a Member, the Proxy which is dated last shall be considered valid; if they are not dated or bear the same date without specific mention of time, all such multiple Proxies shall be treated as invalid.

➤ **Deposit of Proxies:**

Proxies shall be deposited with the Company either in person or through post not later than 48 hours before the commencement of the Meeting in relation to which they are deposited and a Proxy shall be accepted even on a holiday if the last date by which it could be accepted is a holiday.

➤ **Revocation of Proxies:**

If a Proxy had been appointed for the original Meeting and such Meeting is adjourned, any Proxy given for the adjourned Meeting revokes the Proxy given for the original Meeting.

A Proxy later in date revokes any Proxy/Proxies dated prior to such Proxy.

A Proxy is valid until written notice of revocation has been received by the Company before the commencement of the Meeting or adjourned Meeting, as the case may be.

➤ **Inspection of Proxies:**

- Requisitions, if any, for inspection of Proxies shall be received in writing from a Member entitled to vote on any Resolution at least three days before the commencement of the Meeting.
- Proxies shall be made available for inspection during the period beginning twenty-four hours before the time fixed for the commencement of the Meeting and ending with the conclusion of the Meeting.

➤ **Record of Proxies:**

All Proxies received by the company shall be recorded chronologically in a register kept for that purpose. In case any Proxy entered in the register is rejected, the reasons therefor shall be entered in the remarks column.

8. VOTING:

➤ **Proposing a Resolution:**

Every Resolution shall be proposed by a Member and seconded by another Member.

➤ **E-voting:**

Every Company having its equity shares listed on a recognized stock exchange other than companies whose equity shares are listed on SME Exchange or on the Institutional Trading Platform and other companies as prescribed shall provide e-voting facility to their Members to exercise their Voting Rights.

➤ **Voting at the Meeting:**

Every Company, which has provided e-voting facility to its Members, shall also put every Resolution to vote through a ballot process at the Meeting.

- **Show of Hands:**
Every Company shall, at the Meeting, put every Resolution, except a Resolution which has been put to remote e-voting, to vote on a show of hands at the first instance, unless a poll is validly demanded.
- **A Proxy cannot vote on a show of hands.**
- **Poll:**
The Chairman shall order a poll upon receipt of a valid demand for poll either before or on the declaration of the result of the voting on any Resolution on show of hands.
- **Voting Rights:**
Every Member holding equity shares and, in certain cases as prescribed in the Act, every Member holding preference shares, shall be entitled to vote on a Resolution. A Member who is a *related party is not entitled to vote on a Resolution relating to approval of any contract or arrangement in which such Member is a related party.*
- **Second or Casting Vote:**
Unless otherwise provided in the Articles, in the event of equality of votes, whether on show of hands or electronically or on a poll, the Chairman of the Meeting shall have a second or casting vote.

CONDUCT OF E-VOTING:

- Every Company providing e-voting facility shall offer such facility to all Members, irrespective of whether they hold shares in physical form or in dematerialized form and facility for Remote e-voting shall remain open for not less than 3 days.
- The Board shall appoint one or more scrutinisers for e-voting or the ballot process who may be a Company Secretary in Practice, a Chartered Accountant in Practice, a Cost Accountant in Practice, or an Advocate or any other person of repute who is not in the employment of the company.
- The Board shall appoint an Agency.
- The Board shall decide the cut-off date for the purpose of reckoning the names of Members who are entitled to Voting Rights;
- authorise the Chairman or in his absence, any other Director to receive the scrutiniser's register, report on e-voting and other related papers with requisite details.
- Declaration of results - Based on the scrutinizer's report received on Remote e-voting and voting at the Meeting, the Chairman or any other Director so authorised shall countersign the scrutinizer's report and declare the result of the voting forthwith with details of the number of votes cast for and against the Resolution, invalid votes and whether the Resolution has been carried or not.

9. CONDUCT OF POLL:

- When a poll is demanded on any Resolution, the Chairman shall get the validity of the demand verified and, if the demand is valid, shall order the poll forthwith if it is demanded on the question of appointment of the Chairman or adjournment of the Meeting and, in any other case, **within 48 hours of the demand for poll.**
- In the case of a poll, which is not taken forthwith, the Chairman shall announce the date, venue and time of taking the poll to enable Members to have adequate and convenient opportunity to exercise their vote. The Chairman may permit any Member who so desires to be present at the time of counting of votes.
- If the date, venue and time of taking the poll cannot be announced at the Meeting, the Chairman shall inform the Members, the modes and the time of such communication, which shall in any case be **within 24 hours of closure of the Meeting.** A Member who did not attend the Meeting can participate and vote in the poll in such cases.
- **Each Resolution put to vote by poll shall be put to vote separately and One ballot paper may be used for more than one item.**
- **Appointment of scrutinizers:**
The Chairman shall appoint such number of scrutinizers, as he deems necessary, who may include a Company Secretary in Practice, a Chartered Accountant in Practice, a Cost Accountant in Practice, an Advocate or any other person of repute who is not in the employment of the company, to ensure that the scrutiny of the votes cast on a poll is done in a fair and transparent manner.
- **Declaration of results:**
Based on the scrutinizer's report, the Chairman shall declare the result of the poll within two days of the submission of report by the scrutinizer, with details of the number of votes cast for and against the Resolution, invalid votes and whether the Resolution has been carried or not.
- The scrutinizer shall submit his report to the Chairman who shall countersign the same. In case Chairman is not available, for such purpose, the report by the scrutinizer shall be submitted to any Director who is authorised by the Board to receive such report, who shall countersign the scrutinizer's report on behalf of the Chairman.
- The result of the poll with details of the number of votes cast for and against the Resolution, invalid votes and whether the Resolution has been carried or not shall be displayed on the Notice Board of the Company at its Registered Office and its Head Office as well as Corporate Office, if any, if such office is situated elsewhere, and ***in case of Companies having a website, shall also be placed on the website.***
- The result of the poll shall be deemed to be the decision of the Meeting on the Resolution on which the poll was taken.

10. PROHIBITION ON WITHDRAWAL OF RESOLUTIONS:

Resolutions for items of business which are likely to affect the market price of the securities of the Company shall not be withdrawn. However, any resolution proposed for consideration through e-voting shall not be withdrawn.

11. RESCINDING OF RESOLUTIONS:

A Resolution passed at a Meeting shall not be rescinded otherwise than by a Resolution passed at a subsequent Meeting.

12. MODIFICATIONS TO THE RESOLUTIONS:

Modifications to any Resolution *which do not change the purpose of the Resolution materially may be proposed*, seconded and adopted by the requisite majority at the Meeting and, thereafter, the modified Resolution shall be duly proposed, seconded and put to vote.

No modification to any proposed text of the Resolution shall be made if it in any way alters the substance of the Resolution as set out in the Notice.

13. READING OF REPORTS:

The qualifications, observations or comments or other remarks on the financial transactions or matters which have any adverse effect on the functioning of the Company, if any, mentioned in the Auditor's Report shall be read at the Annual General Meeting and attention of the Members present shall be drawn to the explanations / comments given by the Board of Directors in their report.

The qualifications, observations or comments or other remarks if any, mentioned in the Secretarial Audit Report issued by the Company Secretary in Practice, shall be read at the Annual General Meeting and attention of Members present shall be drawn to the explanations / comments given by the Board of Directors in their report.

14. DISTRIBUTION OF GIFTS:

No gifts, gift coupons, or cash in lieu of gifts shall be distributed to Members at or in connection with the Meeting.

15. ADJOURNMENT OF MEETINGS:

- A duly convened Meeting shall not be adjourned unless circumstances so warrant. The *Chairman may adjourn a Meeting with the consent of the Members*, at which a Quorum is present, and shall adjourn a Meeting if so directed by the Members. Meetings shall stand adjourned for want of requisite Quorum.
- The Chairman may also adjourn a Meeting in the event of disorder or other like causes, when it becomes impossible to conduct the Meeting and complete its business.

- *If a Meeting is adjourned sine-die or for a period of 30 days or more*, a Notice of the adjourned Meeting shall be given in accordance with the provisions contained hereinabove relating to Notice.
- If a Meeting is adjourned for a *period of less than 30 days*, the Company shall give not *less than 3 days' Notice specifying the day, date, time and venue of the Meeting*, to the Members either individually or by publishing an advertisement in a vernacular newspaper in the principal vernacular language of the district in which the registered office of the Company is situated, and in an English newspaper in English language, both having a wide circulation in that district.
- If a Meeting, other than a requisitioned Meeting, stands adjourned for want of Quorum, the adjourned Meeting shall be held on the same day, in the next week at the same time and place or on such other day, *not being a National Holiday*, or at such other time and place as may be determined by the Board.
- *If, at an adjourned Meeting, Quorum is not present within half an hour from the time appointed, the Members present, being not less than two in number, will constitute the Quorum.*
- *If, within half an hour from the time appointed for holding a Meeting called by requisitionists, a Quorum is not present, the Meeting shall stand cancelled.*
- *At an adjourned Meeting, only the unfinished business of the original Meeting shall be considered.*

16. BOARD APPROVAL:

The Board shall:

- (a) identify the businesses to be transacted through postal ballot;
- (b) approve the Notice of postal ballot incorporating proposed Resolution(s) and explanatory statement thereto;
- (c) authorise the Company Secretary or where there is no Company Secretary, any Director of the Company to conduct postal ballot process and sign and send the Notice along with other documents;
- (d) appoint one scrutiner for the postal ballot;
- (e) appoint an Agency in respect of e-voting for the postal ballot;
- (f) decide the record date for reckoning Voting Rights and ascertaining those Members to whom the Notice and postal ballot forms shall be sent;
- (g) decide on the calendar of events;
- (h) authorise the Chairman or in his absence, any other Director to receive the scrutiner's register, report on postal ballot and other related papers with requisite details.

17. NOTICE:

Notice of the postal ballot shall be given in writing to every Member of the Company. Such Notice shall be sent either by registered post or speed post, or by courier or by e-mail or by any other electronic means at the address registered with the Company.

18. MINUTES:

- **Maintenance of Minutes:** Minutes shall be recorded in books maintained for that purpose. A distinct Minutes Book shall be maintained for Meetings of the Members of the Company, creditors and others as may be required under the Act.
- Minutes may be maintained in electronic form in such manner as prescribed under the Act and as may be decided by the Board. Minutes in electronic form shall be maintained with Timestamp. The pages of the Minutes Books shall be consecutively numbered.
- Minutes shall not be pasted or attached to the Minutes Book, or tampered with in any manner. Minutes of Meetings, if maintained in loose-leaf form, shall be bound periodically depending on the size and volume.
- Minutes Books shall be kept at the Registered Office of the Company or at such other place, as may be approved by the Board.

19. CONTENTS OF MINUTES:

General Contents:

- 4.1 Minutes shall state, at the beginning the Meeting, name of the company, day, date, venue and time of commencement and conclusion of the Meeting.
- 4.2 Minutes shall record the names of the Directors and the Company Secretary present at the Meeting.
- 4.3 Minutes shall contain a fair and correct summary of the proceedings of the Meeting and minutes shall be written in clear, concise and plain language. Each item of business taken up at the Meeting shall be numbered.

20. RECORDING OF MINUTES:

- 4.4 Minutes shall contain a fair and correct summary of the proceedings of the Meeting. Minutes shall be written in clear, concise and plain language.

21. ENTRY IN THE MINUTES BOOK:

- 4.5 Minutes shall be entered in the **Minutes Book within 30 days** from the date of conclusion of the Meeting.
- 4.6 The date of entry of the Minutes in the Minutes Book shall be recorded by the Company Secretary. Where there is no Company Secretary, it shall be entered by any other person authorised by the Board or the Chairman.

4.7 Minutes, once entered in the Minutes Book, shall not be altered.

22. SIGNING AND DATING OF MINUTES:

- Minutes of a General Meeting shall be signed and dated by the Chairman of the Meeting or in the event of death or inability of that Chairman, by any Director who was present in the Meeting and duly authorised by the Board for the purpose, *within 30 days of the General Meeting*.
- The Chairman shall initial each page of the Minutes, sign the last page and append to such signature the date on which and the place where he has signed the Minutes.

23. INSPECTION AND EXTRACTS OF MINUTES:

- 4.8 Directors and Members are entitled to inspect the Minutes of all General Meetings including Resolutions passed by postal ballot.
- 4.9 Extract of the Minutes shall be given only after the Minutes have been duly signed. However, any Resolution passed at a Meeting may be issued even pending signing of the Minutes, provided the same is certified by the Chairman or any Director or the Company Secretary.

24. PRESERVATION OF MINUTES AND OTHER RECORDS:

- 4.10 Minutes of all Meetings shall be preserved permanently in physical or in electronic form with Timestamp.*
- 4.11 Office copies of Notices, scrutinizer's report, and related papers shall be preserved in good order in physical or in electronic form for as long as they remain current or for 8 financial years, whichever is later and may be destroyed thereafter with the approval of the Board.
- 4.12 Minutes Books shall be kept in the custody of the Company Secretary. Where there is no Company Secretary, Minutes shall be kept in the custody of any Director duly authorised for the purpose by the Board.

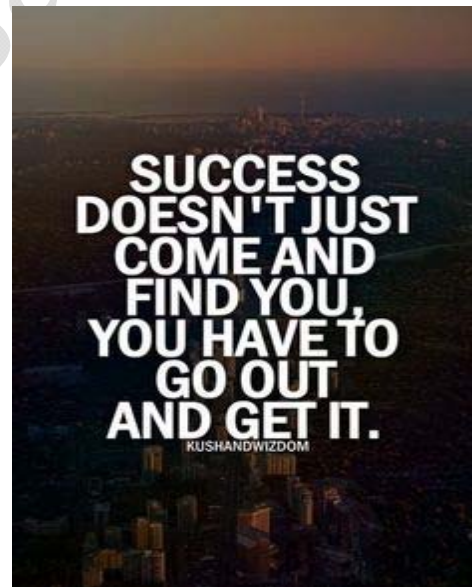
25. REPORT ON ANNUAL GENERAL MEETING:

- 4.13 *Every listed Company* shall prepare a report on Annual General Meeting in the prescribed form, including a confirmation that the Meeting was convened, held and conducted as per the provisions of the Act.
- 4.14 Such report which shall be a fair and correct summary of the proceedings of the Meeting shall contain:
- (a) the day, date, time and venue of the Annual General Meeting;
 - (b) confirmation with respect to appointment of Chairman of the Meeting;
 - (c) number of Members attending the Meeting;

- (d) confirmation of Quorum;
 - (e) confirmation with respect to compliance of the Act and Standards with respect to calling, convening and conducting the Meeting;
 - (f) business transacted at the Meeting and result thereof with a brief summary of the discussions;
 - (g) particulars with respect to any adjournment, postponement of Meeting, change in venue; and
 - (h) any other points relevant for inclusion in the report.
- **Disclosure:** The Annual Return of a Company shall disclose the date of Annual General Meeting held during the financial year.
- **EFFECTIVE DATE:** *This Standard shall come into effect from 1st July, 2015*

Amita Desai & Co.

INSPIRATIONAL QUOTES



Disclaimer

**This legal update is not intended to be a form of solicitation or advertising. The information contained herein is of a general nature and is not intended to address the circumstances of any particular individual or entity. Although we endeavor to provide accurate and timely information, there can be no guarantee that such information is accurate as of the date it is received or that it will continue to be accurate thereafter. No person should act on such information without appropriate professional advice based on the circumstances of a particular situation. This update is intended for private circulation only.*

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