

**RIGHT OF MEMBERS TO INSPECT DOCUMENTS OF THE
COMPANY AS PER THE COMPANIES ACT 2013 (CA 13)**

(As on date of June 30, 2018)

Members of a Company have right to inspect following documents as per CA 13

1. Section 17 of CA 13- Copies of MoA and AoA etc o be given to members

Every company shall on being so requested by a member send to him within 7 days of the request and subject to the payment of such fees as may be prescribed, a copy of each of the following documents, namely:—

- (a) the Memorandum of Association (MoA) ;
- (b) the Articles of Association (AoA); and
- (c) every agreement and every resolution referred to in sub-section (1) of section 117, if and in so far as they have not been embodied in the memorandum or articles like
 - (i) Special Resolution
 - (ii) Unanimously approved resolution by members
 - (iii) Resolution or agreement for appointment, re-appointment, renewal or variation of terms of appointment of Managing Director
 - (iv) Resolution or agreement agreed by any class of members
 - (v) Resolution for voluntary winding up of the company approved by members
 - (vi) Resolution passed under section 179 (3) of the CA 13 and
 - (vii) Any other resolution or agreement as may be prescribed and placed in the public domain.

2. **Section 85 (2) of CA 13 read with Rule 11 of Companies (Registration of Charges) Rule 2014**

Register of Charges (in **Form CHG -7**) and instrument of charges, maintained by Company under Section 85 (1) shall be open for inspection during business hours by **any member or creditor without any payment of fees and by any other person on payment of fees**, subject to such reasonable restrictions as the Company may, by its articles, impose.

The Register of Charge shall be preserved permanently and the document for creation and/ or modification is required to be preserved for a period of 8 years from the date of its satisfaction.

3. **Section 90(3) of CA 13 read with Rule 5 (2) Companies (Significant Beneficial Ownership) Rules 2018—**

Register of Significant Beneficial Owners (SBO)(in **Form No.BEN-3**) shall be maintained by the company which shall be open for inspection during business hours, at such reasonable time of not less than two hours, on every working day as the Board may decide, by any member of the company on payment of such fee as may be specified by the company but not exceeding Rs. 50 for each inspection.

4. **Section 94 and Section 88& 92 (Members Register and Annual Return) of CA 13 read with Rule 14 of Companies (Management and Administration) Rules 2014—**

Register and index of Members, Register of Debenture-holders, Register of any other security holders and copies of Annual Return shall be open for inspection during business hours, at such reasonable time on every working day (not less than 2 hours) as the Board may decide, by a any member, debenture holder, other security holder or beneficial owner **without payment of fee and by any other person on payment of such fee as may be specified in AOA** of the Company but not exceeding Rs. 50 for each inspection.

Any member, debenture holder, other security holder or beneficial owner or any other person may take extracts from any register or index or return without payment of any fees or may requires a copy of such register or entries therein or return on payment of prescribed fees

5. Section 119 (1) and (2) of CA 13 – Minutes book of general meeting

The General Meeting Minutes books or of a resolution passed by postal ballot, shall be kept open during business hours for the inspection by any member without charge, subject to such reasonable restrictions as the company may, by its AOA or in General Meeting, impose, so, however, that not less than 2 hours in each business day are allowed for inspection.

Any member shall be entitled to be furnished, within 7 working days after he has made a request in that behalf to the company, and on payment of such sum of fees as may be specified in the AOA of the company, but not exceeding a sum of Rs 10 for each page or part of any page.

Also a member may make request for soft copy in respect of Minutes of any pervious General Meeting held during a period immediately preceding three FY which shall be provided by Company for free of cost.

Inspection of Minutes Book may be provided in physical or in electronic form. While providing inspection of Minutes Book, the Company Secretary or the official of the company authorized by the Company Secretary to facilitate inspection shall take all precautions to ensure that the Minutes Book is not mutilated or in any way tampered with by the person inspecting.

Amita Desai & Co. Company Secretaries

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.

Minutes of all Meetings shall be preserved permanently in physical or in electronic form with Time stamp. Where, under a scheme of arrangement, a company has been merged or amalgamated with another company, Minutes of all Meetings of the transferor company, as handed over to the transferee company, shall be preserved permanently by the transferee company, notwithstanding that the transferor company might have been dissolved.

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 eight financial years ,whichever is later and may be destroyed thereafter with the approval of the Board.

Office copies of Notices, Scrutinizer's report and related papers of the transferor company, as handed over to the transferee company, shall be preserved in good order in physical or electronic form for as long as they remain current or for eight financial years, whichever is later and may be destroyed thereafter with the approval of the Board and permission of the Central Government, where applicable.

6. Section 120 of CA 13 read with Rule 27 to 30 of the Companies (Management and Administration) Rules, 2018 on maintenance and inspection of documents in ELECTRONIC FORM

Without prejudice to any other provisions of this Act, any document, record, register, minutes, etc.,—

- (a) required to be kept by a company; or
- (b) allowed to be inspected or copies to be given to any person by a company under this Act, may be kept or inspected or copies given, as the case may be, in electronic form in such form and manner as may be prescribed.

Rule 27 of the Companies (Management and Administration) Rules, 2018. Maintenance and inspection of document in electronic form

(1) Every listed company or a company having not less than one thousand shareholders, debenture holders and other security holders, shall maintain its records, as required to be maintained under the Act or rules made there under, in electronic form.

Explanation.- For the purposes of this sub-rule, it is hereby clarified that in case of existing companies, data shall be converted from physical mode to electronic mode within six months from the date of notification of provisions of section 120 of the Act.

(2) The records in electronic form shall be maintained in such manner as the Board of directors of the company may think fit, provided that -

- (a) the records are maintained in the same formats and in accordance with all other requirements as provided in the Act or the rules made there under;
- (b) the information as required under the provisions of the Act or the rules made there under should be adequately recorded for future reference;
- (c) the records must be capable of being readable, retrievable and reproducible in printed form;
- (d) the records are capable of being dated and signed digitally wherever it is required under the provisions of the Act or the rules made there under;

Amita Desai & Co. Company Secretaries

- (e) the records, once dated and signed digitally, shall not be capable of being edited or altered;
- (f) the records shall be capable of being updated, according to the provisions of the Act or the rules made there under, and the date of updating shall be capable of being recorded on every updating.

Explanation: - For the purpose of this rule, the term "records" means any register, index, agreement, memorandum, minutes or any other document required by the Act or the rules made there under to be kept by a company.

Rule 28. Security of records maintained in electronic form.-

(1) The Managing Director, Company Secretary or any other director or officer of the company as the Board may decide shall be responsible for the maintenance and security of electronic records.

(2) The person who is responsible for the maintenance and security of electronic records shall-

- (a) provide adequate protection against unauthorized access, alteration or tampering of records;
- (b) ensure against loss of the records as a result of damage to, or failure of the media on which the records are maintained;
- (c) ensure that the signatory of electronic records does not repudiate the signed record as not genuine;
- (d) ensure that computer systems, software and hardware are adequately secured and validated to ensure their accuracy, reliability and consistent intended performance;
- (e) ensure that the computer systems can discern invalid and altered records;
- (f) ensure that records are accurate, accessible, and capable of being reproduced for reference later;
- (g) ensure that the records are at all times capable of being retrieved to a readable and printable form;

Amita Desai & Co. Company Secretaries

- (h) ensure that records are kept in a non-rewriteable and non-erasable format like pdf. version or some other version which cannot be altered or tampered;
- (i) ensure that at least one backup, taken at a periodicity of not exceeding one day, are kept of the updated records kept in electronic form, every backup is authenticated and dated and such backups shall be securely kept at such places as may be decided by the Board;
- (j) limit the access to the records to the managing director, company secretary or any other director or officer or persons performing work of the company as may be authorized by the Board in this behalf;
- (k) ensure that any reproduction of non-electronic original records in electronic form is complete, authentic, true and legible when retrieved;
- (l) arrange and index the records in a way that permits easy location, access and retrieval of any particular record; and
- (m) take necessary steps to ensure security, integrity and confidentiality of records.

Rule 29. Inspection and copies of records maintained in electronic form.-

Where a company maintains its records in electronic form, any duty imposed by the Act or rules made there under to make those records available for inspection or to provide copies of the whole or a part of those records, shall be construed as a duty to make the records available for inspection in electronic form or to provide copies of those records containing a clear reproduction of the whole or part thereof, as the case may be on payment of not exceeding ten rupees per page.

7. Section 129 of CA 13- Financial Statement

The company need to lay Financial Statement before the members in Annual General Meeting. Where a company has one or more subsidiaries or associate companies, it shall, in addition to stand alone financial statements prepare a consolidated financial statement of the company and of all the subsidiaries and associate companies in the same form and manner as that of its own and in accordance with applicable accounting standards, which shall also be laid before the annual general meeting of the company

Provided that the company shall also attach along with its financial statement, a separate statement containing the salient features of the financial statement of its subsidiary (ies) and associate company (ies) in such form as may be prescribed.

8. Section 136 of CA 13-Right of members to copies of audited financial statement

In case of every company

A Company is required to send to every member of the company, to every trustee for the debenture-holder of any debentures issued by the company and to all persons other than such member or trustee, being the person so entitled, not less than 21 days before the date of the meeting, a copy of the financial statements, including consolidated financial statements, if any, auditor's report and every other document required by law to be annexed or attached to the financial statements, which are to be laid before a company in its general meeting,

In case of a listed company,

(i) the listed company may make all the above mentioned copies of documents available for inspection at its registered office during working hours for a period of 21 days before the date of the meeting and a statement containing the salient features of such documents in the prescribed form or copies of the documents, as the company may deem fit, is sent to every member of the company and to every trustee for the holders of any debentures issued by the company not less than 21 days before the date of the meeting unless the shareholders ask for full financial statements.

Amita Desai & Co. Company Secretaries

- (ii) the listed company shall also place its financial statements including consolidated financial statements, if any, and all other documents required to be attached thereto, on its website, which is maintained by or on behalf of the company.
- (iii) the listed company, if having a subsidiary or subsidiaries, it shall place separate audited accounts in respect of each of subsidiary on its website, if any.
- (iv) the listed company which has a subsidiary incorporated outside India (herein referred to as "foreign subsidiary") and (a) where such foreign subsidiary is statutorily required to prepare consolidated financial statement under any law of the country of its incorporation, it shall place the consolidated financial statement of such foreign subsidiary on its website (b) where such foreign subsidiary is not required to get its financial statement audited under any law of the country of its incorporation and which does not get such financial statement audited, it may place such unaudited financial statement on its website and where such financial statement is in a language other than English, a translated copy of the financial statement in English shall also be placed on the website.

(2) A company shall allow every member or trustee of the holder of any debentures issued by the company **to inspect the documents** stated as above at its registered office during business hours. Provided that every company having a subsidiary or subsidiaries shall provide a copy of separate audited or unaudited financial statements, as the case may be, as prepared in respect of each of its subsidiary to any member of the company who asks for it.

9. **Section 145 of CA 13 Qualification by Auditors-**

The qualifications, observations or comments on financial transactions or matters, which have any adverse effect on the functioning of the company mentioned in the Auditor's Report shall be read before the company in general meeting and shall be open to inspection by any member of the company.

10. **Section 171 (1) Members Right to inspect read with Rule 17 of Companies (Appointment and Qualification of Directors) Rules, 2014**

Register containing particulars of its Directors and KMP along with their shareholding in the company or its holding, subsidiary, subsidiary of company's holding company or associate companies, shall be kept open for inspection during business hours and the members shall have a right to take extracts there from and copies thereof on a request by the members which shall be provided free of cost within 30 days.

This Register shall also be kept open for inspection at every AGM of the company and shall be made accessible to any person attending the meeting.

If any inspection desired by the member is not given or the copy desired by member is not given in 30 days from date of receipt of request , the member can make an application to the Registrar and the Registrar shall order for immediate inspection of it and supply copy as required by the member.

11. **Section 186 of CA 2013 read with rule 12 of Companies (Meeting of Board and its Power) Rules 2014**

Every company to maintain Register in **Form MBP 2** and make entry of giving loan or guarantee or providing security or making an acquisition of securities (Register of Loan and Investment of the Company)if the loan / guarantee or investment has exceeded 60% of paid up share capital , free reserves and securities premium amount or 100% of its free reserves and securities premium amount, whichever is more.

This Register shall be open to inspection at the registered office of the company and it **shall be preserved permanently**. This Register can be in physical or electronic form..

The extracts from such register may be taken therefrom by any member, and copies thereof may be furnished to any member of the Company on payment of such fees as may be prescribed in AOA of the Company which shall not exceed Rs. 10 for each page.

12. Section 187 of CA 13 read with Rule 14 of Companies (Meeting of Board and its Power) Rules 2014 - Investments of company to be held in its own name

All investments made or held by a company in any property, security or other asset shall be made and held by it in its own name. Provided that the company may hold any shares in its subsidiary company in the name of any nominee or nominees of the company, if it is necessary to do so, to ensure that the number of members of the subsidiary company is not reduced below the statutory limit.

Every company shall if it is holding investments in the name of a depository when such investments are in the form of securities held by the company as a beneficial owner and investments have been made by the Company in shares or securities which are not held by it in its own name, maintain a register in **Form MBP 3** which shall contain particulars of investments in shares or other securities beneficially held by the company but which are not held in its own name and the company shall also record the reasons for not holding the investments in its own name and the relationship or contract under which the investment is held in the name of any other person.

The company shall also record whether such investments are held in a third party's name for the time being or otherwise. The register shall be maintained at the registered office of the company. **The register shall be preserved permanently** and shall be open to inspection by any member or debenture-holder of the company without any charge during business hours subject to such reasonable restrictions as the company may by its AOA or in general meeting impose.

13. Section 189 of CA 13 read with Rule 16 of Companies (Meeting of Board and its Power) Rules 2014—Register of Contract in which Directors are interested (in MBP 4)

Every company to keep register giving particulars of all contracts and agreements in which Directors are interested or all contracts or agreement with related parties as defined under section 2(76) and transactions under section 188 of the CA 13.

This Register shall be kept at the registered office of the company and it shall be open for inspection during business hours and extracts may be taken therefrom, and copies thereof as may be required by any member of the company shall be furnished by the company in 7 days time from the date of request from member on such fee as may be specified in the AOA of the Company but not exceeding Rs.10/- per page.

This Register shall also be produced at the commencement of every annual general meeting of the company and shall remain open and accessible during the continuance of the meeting to any person having the right to attend the meeting.

This Register shall be preserved permanently.

14. Section 190 of CA 13- Contract of employment with managing or whole time directors

The copies of the contract of service or the memorandum setting out the terms of contract of service with a managing or whole-time director shall be open to inspection by any member of the company without payment of fee.

The provisions of this section is not applicable to private company.

15. Section 346 of CA 13- Inspection of Books and Papers by Creditors and Contributories

At any time after the making of an order for the winding up of a company by the Tribunal, any creditor or contributory of the company may inspect the books and papers of the company only in accordance with, and subject to such rules as may be prescribed.

16. Article 89 (i) of Table F- Articles of Association of a Company Limited by Shares

The Board shall from time to time determine whether and to what extent and at what times and places and under what conditions or regulations, the accounts and books of the company, or any of them, shall be open to the inspection of members not being directors.

17. Schedule IV read with section 149 (8)- Code for Independent Directors

The terms and conditions of appointment of Independent Directors shall be open for inspection at the registered office of the company by any member during normal business hours and the same shall be available on website of the Company.

18. Minutes of BM is not available to any member for inspection.

As per Section 20 (2) of CA 13, if any document which may be served on any member by sending it to him by post or by registered post or by speed post or by courier or by delivering at his office or address, or by such electronic or other mode as may be prescribed, provided that a member may request for delivery of any document through a particular mode, for which he shall pay such fees as may be determined by the company in its annual general meeting.

Amita Desai & Co. Company Secretaries

Explanation.—For the purposes of this section, the term “courier” means a person or agency which delivers the document and provides proof of its delivery

This means that where the company has not determined any fees in its AGM for dispatching of documents by Registered post , then in that case the company may take a stand that the company will send the same by Ordinary post or courier.

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.*

Amita Desai & Co.

Company Secretaries

Mumbai Off :

1005, Hubtown Solaris

Landline: + 91-22-2684-5920/21

Off Western Express Highway

Fax: + 91-22-6678-7499

East End of Andheri Flyover

Mobile: + 91-982-017-7691
