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## **CS EXECUTIVE**

### **COMPANY LAW AMENDMENTS**

**(old & new syllabus – June 19' attempt)**

**CS VIKAS VOHRA  
CORPORATE BABA**

## Companies (Amendment) Ordinance, 2018 (effective from 2<sup>nd</sup> November, 2018)

### CHAPTER 1 INTRODUCTION

#### ONE PERSON COMPANY

The term resident in India means a person who has stayed in India for a period of not less than 182 days during the immediately preceding *financial* year.

While counting the number of days of stay of a director in India for the financial year 2018-2019, any period of stay between 01.01.2018 till the date of notification of this rule shall also be counted.  
(*this rule was notified on 27 July 2018*)

#### DECLARATION FROM SUBSCRIBERS AND FIRST DIRECTORS

The *declaration* shall be submitted by each of the subscribers to the memorandum and each of the first directors named in the articles in Form No.INC-9 and in Form No. INC-32, (SPICe), *instead of obtaining Affidavit*.

#### CERTIFICATE OF COMMENCEMENT OF BUSINESS (SECTION 10A)

A company incorporated after the commencement of the Companies (Amendment) Ordinance, 2018 and having a share capital shall not commence any business or exercise any borrowing powers unless—

- (a) a declaration is filed by a director within a period of 180 days of the date of incorporation of the company in such form and verified, with the Registrar that every subscriber to the memorandum has paid the value of the shares agreed to be taken by him on the date of making of such declaration; and
- (b) the company has filed with the Registrar a verification of its registered office.

The declaration under section 10A by a director shall be in Form No.INC-20A and shall be filed as provided in the Companies (Registration Offices and Fees) Rules, 2014 and the contents of the said form shall be verified by a Company Secretary or a Chartered Accountant or a Cost Accountant in practice.

If any default is made in complying with the requirements of this section, the company shall be liable to a penalty of fifty thousand rupees and every officer who is in default shall be liable to a penalty of one thousand rupees for each day during which such default continues but not exceeding an amount of one lakh rupees.

Where no declaration has been filed with the Registrar within 180 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 initiate action for the removal of the name of the company from the register of companies.

#### **REGISTERED OFFICE OF COMPANY (SECTION 12)**

If Registrar has reasonable cause to believe that the company is not carrying on any business or operations, he may cause a physical verification of the registered office of the company and if any default is found in complying with the requirements, he may initiate action for the removal of the name of the company from the register of companies.

**CHAPTER 2 - SHARE CAPITAL****PROHIBITION OF ISSUE OF SHARES AT DISCOUNT**

Non-compliance with this section shall result in the company and any officer in default being liable to a *penalty*, instead of being punishable with fine or imprisonment or with both.

**PRIVATE PLACEMENT OF SECURITIES**

- 1) Private placement means offer to a select group of persons, to subscribe to the securities of the company for making an invitation, *who have been identified by the Board (herein referred to as "IDENTIFIED PERSONS")*,
- 2) The number of persons to whom such offer shall be made cannot go beyond 200 in numbers which excludes Qualified Institutional Buyers & employees who are allotted shares under ESOP scheme *in a FINANCIAL YEAR*.
- 3) *Private Placement* Offer letter shall be made to *IDENTIFIED PERSONS* accompanied by an application form serially numbered & addressed either physically or in electronic form within 30 days of recording of names of such invitees. The private placement offer and application shall *NOT* carry any right of *RENUNCIATION*.
- 4) The company is not allowed to advertise such issue in any form or in any form of print media. It is strictly given on private basis.
- 5) The company has to pass a special resolution in general meeting for such issue.
- 6) ~~Any application received by the company shall be for a minimum amount of Rs. 20,000 of the face value of shares.~~
- 7) All the monies collected shall be kept in a separate bank account & can only be collected by way of cheques and *not in cash*.
- 8) Offer Letter under such issue shall be filed in Form PAS-4 with ROC within 30 days from the date of circulation of private placement offer letter.
- 9) All the records of such offer shall be maintained by the company in Form PAS-5.
- 10) Allotment shall be made within a period of 60 days from the receipt of the application. If not, money received shall be repaid within 15 days after the expiry of 60 days. *If the company fails to repay the application money within the aforesaid period, it shall*

*be liable to repay that money with interest at the rate of 12% per annum from the expiry of the 60<sup>th</sup> day.*

- 11) Return of Allotment is required to be filed in Form PAS-3 with the ROC along with prescribed fee *within 15 days of allotment. A company shall not utilise monies raised through private placement unless allotment is made and the return of allotment is filed with the Registrar.*
- 12) The above mentioned provisions are not applicable to a Non Banking Financial Company and Housing Finance Company.

### **ISSUE OF SECURITIES IN DEMATERIALIZED FORM BY UNLISTED PUBLIC COMPANIES**

1. Every unlisted public company shall issue the securities **only in dematerialised form** and facilitate dematerialisation of all its existing securities in accordance with provisions of the Depositories Act, 1996.
2. Every unlisted public company **making any offer for issue of any securities** or buyback of securities or issue of bonus shares or rights offer shall ensure that **before making such offer, entire holding** of securities of its **promoters, directors, key managerial personnel** has been **dematerialised** in accordance with provisions of the Depositories Act, 1996.
3. Every holder of securities of an unlisted public company,-
  - who intends to transfer such securities on or after 2nd October, 2018, shall get such securities dematerialised before the transfer; or
  - who subscribes to any securities of an unlisted public company (whether by way of private placement or bonus shares or rights offer) on or after 2nd October, 2018 shall ensure that all his existing securities are held in dematerialized form before such subscription.
4. Every unlisted public company shall facilitate dematerialisation of all its existing securities by making **necessary application** to a depository and shall secure International Security Identification Number (**ISIN**) for each type of security and shall inform all its existing security holders about such facility.

5. Every unlisted public company shall ensure that –
  - (a) it makes **timely payment of fees** (admission as well as annual) to the depository and registrar to an issue and share transfer agent in accordance with the agreement executed between the parties;
  - (b) it **maintains security deposit**, at all times, of **not less than two years' fees** with the depository and registrar to an issue and share transfer agent, in such form as may be agreed between the parties; and
  - (c) it **complies with the regulations** or directions or guidelines or circulars, issued by SEBI or Depository with respect to dematerialisation of shares of unlisted public companies.
6. No unlisted public company **which has defaulted in sub-rule (5) shall make offer** of any securities or buyback its securities or issue any bonus or right shares till the payments to depositories or registrar to an issue and share transfer agent are made.
7. Except as provided in sub-rule (8), the provisions of the Depositories Act, 1996, the Securities and Exchange Board of India (Depositories and Participants) Regulations, 1996 and the Securities and Exchange Board of India (Registrars to an Issue and Share Transfer Agents) Regulations, 1993 shall apply mutatis mutandis to dematerialisation of securities of unlisted public companies.
8. The **audit report** provided under regulation 55A of the Securities and Exchange Board of India (Depositories and Participants) Regulations, 1996 shall be submitted by the unlisted public company on a **half-yearly basis to the Registrar** under whose jurisdiction the registered office of the company is situated.
9. The **grievances of security holders** of unlisted public companies under this rule shall be filed before the **Investor Education and Protection Fund Authority**.
10. The Investor Education and Protection Fund Authority shall **initiate any action** against a depository or participant or registrar to an issue and share transfer agent after prior consultation with the Securities and Exchange Board of India.

**CHAPTER 3 MEMBERSHIP****SIGNIFICANT BENEFICIAL OWNERSHIP**

- Every individual, who acting alone or together, including a trust and persons resident outside India, holds beneficial interests, of not less than twenty-five per cent or such other percentage as may be prescribed, in shares of a company or the right to exercise, or the actual exercising of significant influence or control over the company (herein referred to as "significant beneficial owner"), shall make a declaration to the company, specifying the nature of his interest and other particulars, in such manner and within such period of acquisition of the beneficial interest or rights and any change.
- Central Government may prescribe a class or classes of persons who shall not be required to make declaration as stated above.
- Further every company shall maintain a register of the interest declared by individuals stated above and changes therein which shall include the name of individual, his date of birth, address, details of ownership in the company and such other details as may be prescribed.
- The register so maintained shall be open to inspection by any member of the company on payment of such fees as may be prescribed.
- Every company shall file a return of significant beneficial owners of the company and changes therein with the Registrar containing names, addresses and other details as may be prescribed within such time, in such form and manner as may be prescribed.
- A company shall give notice to any person (whether or not a member of the company) whom the company knows or has reasonable cause to believe—
  - (a) to be a significant beneficial owner of the company;
  - (b) to be having knowledge of the identity of a significant beneficial owner or another person likely to have such knowledge; or
  - (c) to have been a significant beneficial owner of the company at any time during the three years immediately preceding the date on which the notice is issued, and who is not registered as a significant beneficial owner with the company as required under this section.

- The information required by the notice shall be given by the concerned person within a period not exceeding thirty days of the date of the notice.
- The company shall, where that person fails to give the company the information required by the notice within the time specified therein; or where the information given is not satisfactory, **apply to the Tribunal within a period of fifteen days of the expiry of the period specified in the notice, for an order directing that the shares in question be subject to restrictions with regard to transfer of interest, suspension of all rights attached to the shares** and such other matters as may be prescribed.
- On any application made to the Tribunal, it may, after giving an opportunity of being heard to the parties concerned, make such order restricting the rights attached with the shares within a period of sixty days of receipt of application or such other period as may be prescribed. The company or the person aggrieved by the order of the Tribunal may make an application to the Tribunal for relaxation or lifting of the restrictions within a period of **1 year** from the date of such order. If no such application has been filed within a period of one year from the date of the order, such shares shall be transferred to the authority constituted under section 125(5), in such manner as may be prescribed.

#### **NOTICE TO BE GIVEN TO REGISTRAR FOR ALTERATION OF SHARE CAPITAL (SECTION 64)**

Where any company fails to comply with the provisions of sub-section (1), such company and every officer who is in default shall be liable to a **penalty** of one thousand rupees for each day during which such default continues, or five lakh rupees whichever is less.

#### **SIGNING OF SHARE CERTIFICATE**

- Every certificate shall specify the shares to which it relates and the amount paid-up and shall be signed by two directors or by a director and the company secretary, wherever the company has appointed company secretary.
- In case the company has a common seal it shall be affixed in the presence of persons required to sign the certificate.
- In case of a One Person Company, the certificate shall be signed by a director and the company secretary or any other person authorised by the Board.



- A director shall be deemed to have signed the share certificate if his signature is printed as facsimile signature or digitally signed, but not by means of rubber stamp, provided that the director shall be personally responsible for permitting the affixation of his signature thus and the safe custody of any machine.

**CHAPTER 5 – CHARGES****DUTY TO REGISTER CHARGES (SECTION 77)**

The Registrar may, on an application by the company, allow such registration to be made—

- (a) in case of charges created **before** the commencement of the Companies (Amendment) Ordinance, 2018, within a period of **three hundred days** of such creation; or
- (b) in case of charges created **on or after** the commencement of the Companies (Amendment) Ordinance, 2018, within a period of **sixty days of such creation**, on payment of such additional fees as may be prescribed.

Provided further that if the registration is not made within the period specified—

- (a) in clause (a), the registration of the charge shall be made **within six months** from the date of commencement of the Companies (Amendment) Ordinance, 2018, on payment of such additional fees as may be prescribed and different fees may be prescribed for different classes of companies;
- (b) in clause (b), the Registrar may, on an application, allow such registration to be made within a **further period of sixty days** after payment of such ad valorem fees as may be prescribed.

**SATISFACTION OF CHARGE**

The company or charge holder shall within a period of **300 days** from the date of the payment or satisfaction in full of any charge registered, give intimation of the same to the Registrar in Form No. CHG-4 along with the fee.

**PUNISHMENT FOR CONTRAVENTION (SECTION 86)**

If any person wilfully furnishes any false or incorrect information or knowingly suppresses any material information, required to be registered in accordance with the provisions of section 77, he shall be liable for action under section 447.

**RECTIFICATION BY CENTRAL GOVERNMENT IN REGISTER OF CHARGES (SECTION 87)**

The Central Government on being satisfied that —

- (a) the omission to give intimation to the Registrar of the payment or satisfaction of a charge, within the time required; or
- (b) the omission or misstatement of any particulars with respect to any such charge or modification or with respect to any memorandum of satisfaction or other entry made in pursuance of section 82 or section 83,

was accidental or due to inadvertence or some other sufficient cause or it is not of a nature to prejudice the position of creditors or shareholders of the company, it may, on the application of the company or any person interested and on such terms and conditions as the Central Government deems just and expedient, direct that the time for the giving of intimation of payment or satisfaction shall be extended or, the omission or misstatement shall be rectified.

**CHAPTER 8 - ACCOUNTS, AUDIT AND AUDITORS****CHANGE IN FINANCIAL YEAR [SECTION 2(41)]**

Where a company or body corporate, which is a holding company or a subsidiary or associate company of a company incorporated outside India and is required to follow a different financial year for consolidation of its accounts outside India, **CG may**, on an application made by that company or body corporate in such form and manner as may be prescribed, allow any period as its financial year, whether or not that period is a year.

Any application pending before the Tribunal as on the date of commencement of the Companies (Amendment) Ordinance, 2018, shall be disposed of by the Tribunal in accordance with the provisions applicable to it before such commencement. ***Henceforth, powers to change the financial year shall be with CG and it has delegated powers to Regional Director.***

**PROCEDURE**

- The application for approval of concerned Regional Director, shall be filed in e-Form No.RD-1 along with the fee.
- Where the Regional Director on examining the application, finds it necessary to call for further information or finds such application to be defective or incomplete in any respect, he shall give intimation to the applicant or company, directing them to furnish such information and to re-submit such application within a period of 15 days, in e-Form No. RD-GNL-5.
- A maximum of 2 re-submissions shall be allowed.
- In case where such further information called for has not been provided or the defects or incompleteness has not been rectified to the satisfaction of the Regional Director within the period allowed, the Regional Director shall reject the application with reasons within 30 days from the date of filing application or within 30 days from the date of last re-submission made.
- In case where the application is found to be in order, Regional Director shall allow and convey the order within 30 days from the date of application or within 30 days from the date of last re-submission.

- Where no order for approval or re-submission or rejection has been explicitly made by the Regional Director within the stipulated time of 30 days, it shall be deemed that the application stands approved and an approval order shall be automatically issued to the applicant.
- The order conveyed by the Regional Director shall be filed by the company with the Registrar in Form No.INC-28 within 30 days from the date of receipt of the order along with fee.

### **REMOVAL, RESIGNATION OF AUDITOR AND GIVING OF SPECIAL NOTICE (SECTION 140)**

Non-compliance with sub-section (2) of Section 140 shall result in the auditor being liable to a *penalty*, instead of being punishable with fine.

### **COPY OF FINANCIAL STATEMENT TO BE FILED WITH REGISTRAR SECTION 137(3)**

Non-compliance with sub-section (1) or (2) of Section 137 shall result in:

- (i) the company being liable to a *penalty*, instead of being punishable with fine; and
- (ii) the managing director and the Chief Financial Officer of the company, if any, and, in the absence of the managing director and the Chief Financial Officer, any other director who is charged by the board of directors with the responsibility of complying with the provisions of Section 137, and, in the absence of any such director, all the directors of the company, being liable to a *penalty*, instead of being punishable with fine or imprisonment or with both.

**CHAPTER 9 – BOARDS REPORT & DISCLOSURES****MATTERS TO BE INCLUDED IN BOARD'S REPORT FOR ONE PERSON COMPANY AND SMALL COMPANY**

The Board's Report of One Person Company and Small Company shall be prepared based on the stand alone financial statement of the company, which shall be in abridged form and contain the following:-

- (a) the web address, if any, where annual return has been placed;
- (b) number of meetings of the Board;
- (c) Directors' Responsibility Statement;
- (d) details in respect of frauds reported by auditors other than those which are reportable to the Central Government;
- (e) explanations or comments by the Board on every qualification, reservation or adverse remark or disclaimer made by the auditor in his report;
- (f) the state of the company's affairs;
- (g) the financial summary or highlights;
- (h) material changes from the date of closure of the financial year in the nature of business and their effect on the financial position of the company;
- (i) the details of directors who were appointed or have resigned during the year;
- (j) the details or significant and material orders passed by the regulators or courts or tribunals impacting the going concern status and company's operations in future.

The Report of the Board shall contain the particulars of contracts or arrangements with related parties in Form AOC-2.

**ANNUAL RETURN (SECTION 92)**

If any company fails to file its annual return before the expiry of the period, such company and its every officer who is in default shall be liable to a **penalty** of fifty thousand rupees and in case of continuing failure, with **further penalty** of one hundred rupees for each day during which such failure continues, subject to a maximum of five lakh rupees.

**CHAPTER 16 - DIRECTORS****RESIDENT DIRECTOR**

The term resident in India means a person who has stayed in India for a period of not less than 182 days during the immediately preceding *financial* year.

While counting the number of days of stay of a director in India for the financial year 2018-2019, any period of stay between 01.01.2018 till the date of notification of this rule shall also be counted. (*this rule was notified on 27 July 2018*).

**DEFINITION OF INDEPENDENT DIRECTOR [SEC 149(6)]**

Section 149(6) gives the definition of Independent Director, in relation to a company, means a director other than a managing director or a whole time director or a nominee director:

- a) Who in the opinion of the Board, is a person of integrity and possesses relevant expertise and experience;
- b) (i) Who is or was not a promoter of the company or its holding, subsidiary or associate company;  
(ii) Who is not related to promoters or directors of the company, its holding, subsidiary or associate company;
- c) Who has or had no pecuniary relationship, ***other than remuneration as such director or having transaction not exceeding ten per cent of his total income or such amount as may be prescribed***, with the company its holding, subsidiary or associate company, or their promoters, or directors, during the two immediately preceding financial years or during the current financial year;
- d) ~~None of whose relatives has or had pecuniary relationship or transaction with the company, its holding, subsidiary or associate company, or their promoters, or directors, amounting to~~

~~two per cent, or more of its gross turnover or total income or fifty lakh rupees or such higher amount as may be prescribed, whichever is lower, during the two immediately preceding financial years or during the current financial year;~~

*(d) none of whose relatives—*

*(i) is holding any security of or interest in the company, its holding, subsidiary or associate company during the two immediately preceding financial years or during the current financial year:*

*Provided that the relative may hold security or interest in the company of face value not exceeding fifty lakh rupees or two per cent. of the paid-up capital of the company, its holding, subsidiary or associate company or such higher sum as may be prescribed;*

*(ii) is indebted to the company, its holding, subsidiary or associate company or their promoters, or directors, in excess of such amount as may be prescribed during the two immediately preceding financial years or during the current financial year;*

*(iii) has given a guarantee or provided any security in connection with the indebtedness of any third person to the company, its holding, subsidiary or associate company or their promoters, or directors of such holding company, for such amount as may be prescribed during the two immediately preceding financial years or during the current financial year; or*

*(iv) has any other pecuniary transaction or relationship with the company, or its subsidiary, or its holding or associate company amounting to two per cent. or more of its gross turnover or total income singly or in combination with the transactions referred to in sub-clause (i), (ii) or (iii);]*



- e) Who, neither himself nor any of his relative:
- (i) holds or has held the position of a key managerial personnel or is or has been employee of the company or its holding, subsidiary or associate company in any of the three financial years immediately preceding the financial year in which he is proposed to be appointed;
  - (ii) is or has been an employee or proprietor or a partner, in any of the three financial years immediately preceding the financial year in which he is proposed to be appointed, of:
    - A firm of auditors or company secretaries in practice or cost auditors of the company or its holding, subsidiary or associate company; or
    - Any legal or a consulting firm that has or had any transaction with the company, its holding, subsidiary or associate company amounting to ten per cent, or more of the gross turnover of such firm;
  - (iii) holds together with his relatives two per cent, or more of the total power of the company;
- or
- (iv) is a Chief Executive or director, by whatever name called, of any nonprofit organization that receives twenty-five per cent, or more of its receipts from the company, any of its promoters, directors or its holding, subsidiary or associate company or that holds two per cent, or more of the total voting power of the company; or
- f) Who possesses such other qualifications as may be prescribed.

#### **DISQUALIFICATIONS FROM APPOINTMENT OF DIRECTORS (SECTION 164)**

A new clause (i) after clause (h) in section 164(1) inserted, whereby a person shall be subject to disqualification if he *accepts directorships exceeding the maximum number of directorships* provided in section 165.

**DIRECTORS IDENTIFICATION NUMBER**

The Central Government or Regional Director (Northern Region), or any officer authorised by the Central Government or Regional Director (Northern Region) shall, deactivate the Director Identification Number (DIN), of an individual who does not intimate his particulars in e-form DIR-3-KYC within stipulated time.

The de-activated DIN shall be re-activated only after e-form DIR-3-KYC is filed along with fee as prescribed.

**DIRECTORS KYC (SECTION 12A)**

Every individual who has been allotted a Director Identification Number (DIN) as on 31st March of a financial year as per these rules shall, submit e-form DIR-3-KYC to the Central Government on or before 30th April of immediate next financial year.

After this amendment, every individual who has already been allotted a Director Identification Number (DIN) as at 31st March, 2018, shall submit e-form DIR-3 KYC on or before 5th October, 2018.

**CHAPTER 17 – KEY MANAGERIAL PERSONNEL****DISQUALIFICATIONS OF MD/ WTD/ MANAGER**

1. He is not below the age of 21 years and has not attained the age of 70 years or more. Such condition may be waived by passing special resolution.
3. He is an undischarged insolvent or adjudicated as an insolvent.
4. He has in the past suspended payment to his creditors.
5. He has been convicted by the court for an offence for more than 6 months.

Apart from this, Part I of Schedule V contains five conditions which must be satisfied by a person to be eligible for appointment as managing director, whole-time director or manager without the approval of the Central Government. These conditions are as below:

(a) he had not been sentenced to imprisonment for any period, or to a fine exceeding one thousand rupees, for the conviction of an offence under any of the following Acts, namely:-

- (i) the Indian Stamp Act, 1899,
- (ii) the Central Excise Act, 1944,
- (iii) the Industries (Development and Regulation) Act, 1951,
- (iv) the Prevention of Food Adulteration Act, 1954 ,
- (v) the Essential Commodities Act, 1955,
- (vi) the Companies Act, 2013,
- (vii) the Securities Contracts (Regulation) Act, 1956, (viii) the Wealth-tax Act, 1957,
- (ix) the Income-tax Act, 1961,
- (x) the Customs Act, 1962,
- (xi) the Competition Act, 2002,
- (xii) the Foreign Exchange Management Act, 1999,
- (xiii) the Sick Industrial Companies (Special Provisions) Act, 1985, (xiv) the Securities and Exchange Board of India Act, 1992,
- (xv) the Foreign Trade (Development and Regulation) Act, 1992; (xvi) the Prevention of Money Laundering Act, 2002;

- *The Insolvency & Bankruptcy Code, 2016*
- *The Goods & Services Tax Act, 2017*
- *The Fugitive Economic Offenders Act, 2018*

(b) he had not been detained for any period under the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974;

(c) he has completed the age of 21 years and has not attained the age of 70 years:

Where no such special resolution is passed but votes cast in favour of the motion exceed the votes, if any, cast against the motion and the Central Government is satisfied, on an application made by the Board, that such appointment is most beneficial to the company, the appointment of the person who has attained the age of seventy years may be made.

~~(d) where he is a managerial person in more than one company, he draws remuneration from one or more companies subject to the ceiling provided in section V of Part II;~~

(e) he is resident in India.

### MANAGERIAL REMUNERATION (SEC 197)

1. The maximum ceiling for payment of managerial remuneration by a public company to all its directors including MD, WTD or Manager shall not exceed 11% of net profits of the company.
2. Any remuneration over and above 11% or as provided in schedule V to the Act shall require prior sanction of the shareholders ~~as well as Central Government~~.
3. Remuneration payable to either one of MD/ WTD or manager shall not exceed 5% of net profits of the company. However, if there is more than one such Director, overall remuneration to all of them taken together shall not exceed 10% of the net profits of the company.
4. Remuneration payable to any other Director other than MD or WTD shall not exceed-
  - i. 1% of the Net profits of the company, if the company has a MD/WTD or manager
  - ii. 3% of the Net profits in any other case

**ANY REMUNERATION PAID ABOVE ANY OF THESE LIMITS ie 1%, 3%, 5% OR 10% SHALL ALSO REQUIRE APPROVAL OF SHAREHOLDERS BY SPECIAL RESOLUTION AND NO CENTRAL GOVERNMENT APPROVAL IS NOW REQUIRED.**

*Where the company has defaulted in payment of dues to any bank or public financial institution or nonconvertible debenture holders or any other secured creditor, the prior approval of the bank or public financial institution concerned or the non-convertible debenture holders or other secured creditor shall be obtained by the company before obtaining the approval in the general meeting.*

- iii. Sitting fees payable for attending the meetings of the Board or Committee shall be excluded while calculating the overall managerial remuneration.
5. In case if the company has inadequate or no profits, the company shall not pay to any of its Directors, remuneration beyond what is provided under schedule V to the Companies Act, 2013. ~~Any remuneration over and above schedule V shall require prior approval of Central Government.~~ **NOW NO CENTRAL GOVERNMENT APPROVAL IS REQUIRED. ONLY SHAREHOLDERS PERMISSION BY WAY OF SPECIAL RESOLUTION IS REQUIRED.**

*Where the company has defaulted in payment of dues to any bank or public financial institution or nonconvertible debenture holders or any other secured creditor, the prior approval of the bank or public financial institution concerned or the non-convertible debenture holders or other secured creditor shall be obtained by the company before obtaining the approval in the general meeting.*

6. Any remuneration paid to any of the Directors in their professional capacity and as per the recommendations of the Nomination Committee or Board of Directors, the concerned Director possesses necessary qualifications, the remuneration paid shall be in addition to the overall limits as provided under Sec. 197 and schedule V to the Act.
7. For attending the meetings of board of directors of the company or any committee thereof, maximum sitting fee allowed to be paid to such Directors shall not exceed Rs. 1,00,000. Sitting fees of Independent and Women Directors shall not be less than the sitting fees payable to other Directors

### MANAGERIAL REMUNERATION UNDER SCHEDULE V [PART II]

1. Remuneration payable in case of inadequate profits or no profits.
2. ~~Without obtaining prior Central Government permission,~~ a company is allowed to pay the following managerial remuneration as provided below:

| Effective Capital                      | Overall Managerial Remuneration                                   |
|--|---|
| 1. Negative or less than 5 Crores      | 60 lakhs  |
| 2. 5 crores but less than 100 crores   | 84 lakhs  |
| 3. 100 crores but less than 250 crores | 120 lakhs   |
| 4. 250 crores and above                | 120 lakhs plus 0.01% of effective capital in excess of 250 crores |

- a. ~~If a special resolution is passed by the shareholders, the limits stated above shall be doubled.~~

**ANY AMOUNT PAID BEYOND THIS LIMIT SHALL REQUIRE APPROVAL OF SHAREHOLDERS BY WAY OF A SPECIAL RESOLUTION. NO CG APPROVAL IS NOW REQUIRED.**

*Provided where that the company has defaulted in payment of dues to any bank or public financial institution or nonconvertible debenture holders or any other secured creditor, the prior approval of the bank or public financial institution concerned or the non-convertible debenture holders or other secured creditor shall be obtained by the company before obtaining the approval in the general meeting.*

### REMUNERATION DRAWN IN EXCESS OF PRESCRIBED LIMIT

Any remuneration, whether directly or indirectly drawn in excess of the remuneration as provided in the Act, ~~without obtaining prior sanction of the Central Government~~, he shall refund such sums to the company, within two years or such lesser period as may be allowed by the company, and until then, it shall be held by such Director in trust till the time the same is to be refunded to the company.

The company shall not waive the recovery of any sum refundable, unless approved by the company by special resolution ***within 2 years from the date, the sum becomes refundable.***

Where the company has defaulted in payment of debts to banks, debenture holders or any other secured creditor, their permission shall be obtained by the company before obtaining approval of such waiver.

### ADDITIONS TO SECTION 197

The auditor of the company shall, in his report under section 143, make a statement as to whether the remuneration paid by the company to its directors is in accordance with the provisions of this section, whether remuneration paid to any director is in excess of the limit laid down under this section and give such other details as may be prescribed.

On and from the commencement of the Companies (Amendment) Act, 2017, any application made to the Central Government under the provisions of this section [as it stood before such commencement], which is pending with that Government ***shall abate***, and the company shall, within one year of such commencement, obtain the approval in accordance with the provisions of this section, as so amended.

#### **FINE TO PENALTY**

##### **Section 191(5): Payment to Director for Loss of Office, etc., in connection with transfer of undertaking, property or shares**

Non-compliance with Section 191 shall result in the director of the company being liable to a ***penalty***, instead of being punishable with fine.

##### **Section 197(15): Overall maximum managerial remuneration and managerial remuneration in case of absence or inadequacy of profits**

Under sub-section (15) Non-compliance with Section 197 shall result in any person in default being liable to a ***penalty***, instead of being punishable with fine.

##### **Section 203(5): Appointment of Key Managerial Personnel**

Non-compliance with Section 203 shall result in the company, every director and key managerial personnel of the company who is in default being liable to a ***penalty***, instead of being punishable with fine.



**CHAPTER 18 - BOARD & COMMITTEE MEETINGS****AUDIT COMMITTEE & NRC**

*The Board of directors of every listed **public** company and a company covered under rule 4 of the Companies (Appointment and Qualification of Directors) Rules, 2014 shall constitute an 'Audit Committee' and a 'Nomination and Remuneration Committee of the Board'.*

The following classes of unlisted public company shall not be covered under above rule, namely:-

- (a) a joint venture;
- (b) a wholly owned subsidiary; and
- (c) a dormant company

**CHAPTER 19 - GENERAL MEETINGS****STATEMENT TO BE ANNEXED TO NOTICE SECTION 102(5)**

Non-compliance with Section 102 shall result in every promoter, director, manager or other key managerial personnel who is in default being liable to a **penalty**, instead of being punishable with fine.

**REPORT ON AGM (SECTION 121)**

If the company fails to file the report under sub--section (2) before the expiry of the period specified therein, such company shall be liable to a **penalty** of INR 1 lakh and in case of continuing failure, with **further penalty** of INR 500 for each day after the first during which such failure continues, subject to a maximum of INR 5 lakh and every officer who is in default shall be liable to a **penalty** which shall not be less than INR 25,000 and in case of continuing failure, with **further penalty** of INR 500 for each day after the first during which such failure continues, subject to a maximum of INR 1 lakh.

**COMPOUNDING OF OFFENCES [SEC 441]**

Any offence punishable (whether committed by a company or any officer thereof) with fine only and where the maximum amount of fine which may be imposed for such offence does not exceed ~~five~~ **twenty five** lakh rupees, may, be compounded by the Regional Director;

Any offence punishable under this Act (whether committed by a company or any officer thereof) with fine only and where the maximum amount of fine which may be imposed for such offence exceeds ~~five~~ **twenty five** lakh rupees, may, be compounded by the Tribunal;

Any offence which is punishable under this Act with imprisonment only or with imprisonment and also with fine shall not be compoundable.

***No more offences are now compoundable by any Special Court.***

**PENALTY FOR REPEATED DEFAULT (SECTION 454A)**

Where a company or an officer of a company or any other person having already been subjected to penalty for default under any provisions of this Act, again commits such default within a period of 3 years from the date of order imposing such penalty passed by the adjudicating officer or RD, as the case may be, it or he shall be liable for the second or subsequent defaults for an amount equal to twice the amount of penalty provided for such default under the relevant provisions of this Act

**LIMITED LIABILITY PARTNERSHIP (SECOND AMENDMENT) RULES, 2018**

Effective Date: 2nd October, 2018

Form RUN-LLP (Reserve Unique Name-Limited Liability Partnership), Form FiLLiP (Form for incorporation of Limited Liability Partnership), Form 5, Form 17 and Form 18 shall be processed by the Registrar, Central Registration Centre (CRC) for and on behalf of the jurisdictional Registrar.

Every individual, who intends to be appointed as a designated partner of an existing limited liability partnership, shall make an application electronically in Form DIR-3 under the for obtaining DPIN under the Limited Liability Partnership Act, 2008 and such DIN shall be sufficient for being appointed as designated partner under the Limited Liability Partnership Act, 2008.