

**COMPANIES ACT 2013 WITH SPECIAL
REFERENCE TO GOVERNMENT COMPANIES**

PRESENTATION

BY

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GOVERNMENT COMPANIES

- ✓ According to Sec 2(45) of the Act, a Government Company is one in which 51% of the paid-up share capital is held by the Central Government (C.G) or by any one or more State Governments (SG) or partly by the CG and partly by one or more SGs.

A Subsidiary of such a company is also a Government Company.

Government Companies Enjoys certain Exemptions as per circular No 463(E) dated 05-06-2015 and circular no. 582 (E) dated 13-06-2017

OFFICER - IN- DEFAULT

- ✓ According to Section 2 (60) of the Act, the following shall be officer – in – default.
 - ❖ whole-time director;
 - ❖ key managerial personnel;
 - ❖ where there is no key managerial personnel, such director or directors as specified by the Board in this behalf and who has or have given his or their consent in writing to the Board to such specification, or all the directors, if no director is so specified;
 - ❖ any person who, under the immediate authority of the Board or any key managerial personnel, is charged with any responsibility including maintenance, filing or distribution of accounts or records, authorises, actively participates in, knowingly permits, or knowingly fails to take active steps to prevent, any default;

OFFICER - IN- DEFAULT (CONTD.)

- ❖ any person in accordance with whose advice, directions or instructions the Board of Directors of the company is accustomed to act, other than a person who gives advice to the Board in a professional capacity;
- ❖ every director, in respect of a contravention of any of the provisions of this Act, who is aware of such contravention by virtue of the receipt by him of any proceedings of the Board or participation in such proceedings without objecting to the same, or where such contravention had taken place with his consent or connivance;

JOINT VENTURE

- ✓ The expression "joint venture" means a joint arrangement whereby the parties that have joint control of the arrangement have rights to the net assets of the arrangement.

INC 22A

- ✓ A new Form INC 22A (E-Form ACTIVE) has been introduced to ensure verification of registered offices of companies. The Form requires photographs of Registered office, Latitude and longitude of registered office to be provided. The last date of submission of this Form is 25-04-2019. Delayed submission will entail a penalty of Rs. 10000/-. All the Directors are required to have DIN for success in uploading this form.

EXEMPTION FOR GOVERNMENT COMPANIES

- ✓ Exemption to Government Companies vis-à-vis section 164(2) is contained in circular dated 05-06-2015. Consequently a Director of a Government company will not be disqualified if other companies in which he is a Director fail to furnish Financial Statements for 3 years.
- ✓ Other Exemptions are contained in the Circulars dated 05-06-2015 & 13-06-2017.

ISSUES RELATING TO LLPs

- ✓ LLP Act, 2008 was notified on 31-03-2009. The first set of LLP Rules came into effect on 01-04-2009. Minimum 2 persons are required to form an LLP. There is no limit on Maximum number of Partners. The regulatory compliances are much less than a Private Company.

Manufacturing Activities are also allowed under the LLP Act.

APPOINTMENT OF DIRECTORS

- ✓ **Board of Directors** As per Section 2(10) of the Act, the Board of Directors is the collective body of Directors of the Company.

- ✓ **DIR 3 KYC** This form has to be submitted by all Directors and confirms the details of the Director.

- ✓ **Appointment and Qualifications Of Directors (Section 149-172)** Every Company shall have a Board of Directors which includes a minimum of three/two directors in a Public/Private Company respectively. The disqualification of Directors are as under:
 - he is of unsound mind and stands so declared by a competent court;
 - he is an undischarged insolvent;

APPOINTMENT OF DIRECTORS (CONTD.)

- he has applied to be adjudicated as an insolvent and his application is pending;
- he has been convicted by a court of any offence, whether involving moral turpitude or otherwise, and sentenced in respect thereof to imprisonment for not less than six months and a period of five years has not elapsed from the date of expiry of the sentence:

- an order disqualifying him for appointment as a director has been passed by a court or Tribunal and the order is in force;

APPOINTMENT OF DIRECTORS (CONTD.)

- he has been convicted of the offence dealing with related party transactions under section 188 at any time during the last preceding five years; or;
 - he has not complied with sub-section (3) of section 152.
- ✓ **Number of Directors** The maximum limit of directors in the Company has been fixed at 15 but to add more directors Special Resolution can be passed. In prescribed class or classes of companies, there should be at least 1 woman director.

APPOINTMENT OF DIRECTORS (CONTD.)

❑ **Types of Directors in a Company**

- ✓ **Managing Director** Managing Director is a director who has substantial decision-making power and responsible for managing various activities of the company.
- ✓ **Non – Excutive Director** Non-Executive Ordinary Director means a simple Director who attends the Board Meetings of a company and participates in the matters put before the Board of Directors. They are neither whole-time directors nor managing directors. They are not regularly involved in the day to day operations of the company.

APPOINTMENT OF DIRECTORS (CONTD.)

✓ **Additional Director**

Additional Directors are appointed by the Board between the two Annual General Meetings subject to the provisions of the Articles of Association of the Company. Additional Director shall hold office only up to the date of next AGM.

✓ **Alternate Director**

Alternate Director is someone appointed by the Board of Directors in a general meeting to act for a Director called the original director during his/her absence for a period of not less than 3 months. Generally, Alternate Director is appointed for a person who is a Non-Resident Indian or Foreign Collaborators of a Company.

APPOINTMENT OF DIRECTORS (CONTD.)

- ✓ **Whole-time Director** A whole-time director is a director in the whole-time employment of the company.
- ✓ **Independent Director** An Independent Director is a director of a Board of Directors who do not have a material or pecuniary relationship with a company, except sitting fees. The Act lays down the criteria of Independence. Nominee Director is not an Independent Director. Section - 149
- ✓ **Nominee Directors** “Nominee Director” means a director nominated by any financial institution in pursuance of the provisions of any law for the time being in force, or of any agreement, or appointed by any Government, or any other person to represent its interests. Section - 149

LIABILITIES OF DIRECTORS

- ❑ The Act provides for limiting the liability of Independent Director and non executive director not being promoter or key managerial personnel. (Section 149(12)).
- ❑ Director's liability arises because of their position as agents or officers of the Company as also for being in the position of trustees or having fiduciary relation with the Company or its shareholders.
- ❑ Some of these liabilities are in contract, some are in tort, some are under the criminal law and others are statutory, i.e., under the Companies Act, 2013 and other laws.

LIABILITIES OF DIRECTORS (CONTD.)

✓ **Directors Liability in the case of fraud**

- ❑ According to Section 447 of the Act any Director found guilty of fraud involving of an amount of at least Rs. 10 lakhs or one percent of the Turnover of the Company whichever is lower shall be punishable with imprisonment for a term which shall not be less than 6 months but which may extend to ten years & shall also be liable to fine which shall not be less than the amount involved in the fraud but which may extend to three times the amount involved

- ❑ **Some Case Studies on Fraud**
 - ❖ Punjab National Bank
 - ❖ ILFS

LIABILITIES OF DIRECTORS (CONTD.)

- ✓ **Liabilities Of Independent And Non-Executive Directors & Dissent in the Board Meetings**
- ❑ A non-executive/independent director should be held liable only in respect of any contravention of any provisions of the Act which had taken place with his knowledge (attributable through Board processes) and where he has not acted diligently, or with his consent or connivance. If the independent director does not initiate any action upon knowledge of any wrong, such director shall be held liable. Knowledge should flow from the processes of the Board. Additionally, upon knowledge of any wrong, follow up action / dissent of such independent directors from the commission of the wrong should be recorded in the minutes of the board meeting.
- ✓ Reference may be made to Circular No. 8/2011 dated 25-03-2011 relating to prosecution of Directors

MEETINGS OF BOARD

- ✓ **Meetings Of Board** At least 4 meeting should be held each year. There is no requirement of holding the meeting every quarter; the only requirement is that not more than 120 days shall elapse between two consecutive meetings. (Section 173 (1))
- ✓ **Video Conferencing** The Act provides that Director can participate in the Board meeting through video conferencing or other audio visual mode as may be prescribed. (Section 173 (2))
- ✓ **Notice for Board Meetings** Notice of not less than seven days in writing is required to call a Board meeting and notice of meeting to all directors shall be given, whether he is in India or outside India by hand delivery or by post or by electronic means. (Section 173 (3)). As per first proviso below section 173(3) a Board Meeting can be held at a shorter notice to transact urgent business provided at least one Independent Director, if any, is present.

MEETINGS OF BOARD (CONTD.)

- ✓ **Quorum for Board Meetings** The quorum for a meeting of the Board of Directors of a company shall be one-third of its total strength or two directors, whichever is higher. The participation of director at Board meeting through video conferencing or by other electronic means shall be counted for the purpose of Quorum. (Section 174)
- ✓ **Minutes of Board Meeting** As per Sec. 118 of the Act, every company shall prepare the minutes of the proceedings of every general meeting of shareholders and every meeting of the Board of Directors and get them signed within 30 days of the meeting. Such minutes are to be carefully preserved.

RESIGNATION OF DIRECTORS & BOARD'S REPORT

✓ Compliance in case of resignation of Directors

A director may resign from his office by giving a notice (Section 168) under rule 15 of the Companies (Appointment and Qualification of Directors) Rules, 2014, The company, within 30 days of receipt of such notice shall intimate the register by filling DIR 12.

The resigning director shall also forward a copy of his resignation to RoC within 30 days of Resignation Section 168(1).

✓ Board's Report (Section 134) The Board's report for every company except for One Person Company, shall have provide various types of additional information like number of meetings of the Board, Company's policy on directors' appointment and remuneration; Explanations or comments by the Board on every qualification, reservation or adverse remark or disclaimer made by the Auditors, particulars of loans, guarantees or investments etc.

The Directors Responsibility Statement provides affirmation from the Board on various issues.

CORPORATE GOVERNANCE PRACTICES

- ✓ Companies for which Independent Directors need to be appointed

- ❖ The following class or classes of Companies shall have atleast two directors as independent directors:-
 - Every listed Public company;
 - The Public Companies having paid up share capital of 10 crore rupees or more;
 - The Public Companies having turnover of 100 crore rupees or more;
 - The Public Companies which have, in aggregate, outstanding loans, debentures and deposits, exceeding 50 crore rupees;

CORPORATE GOVERNANCE PRACTICES (CONTD.)

✓ Vigil Mechanism

Vigil mechanism to be established in the prescribed manner by every listed company and Companies which accepts deposits from the public & Companies having borrowings from banks/public financial institutions in excess of Rs. 50 crores. – Section 177 (9).

CORPORATE GOVERNANCE PRACTICE (CONTD.)

✓ Woman Director

- The following class of Companies shall appoint at least one woman director:
 - Every listed company;
 - Every other public company having:-
 - ❖ Paid up share capital of 100 crore rupees or more;
 - ❖ Turnover of 300 crore rupees or more;
- Section 149 read with rule 3 of Companies (Appointment & Qualification of Directors) Rules, 2014

ACCOUNTS & AUDIT OF COMPANIES

- ✓ **Financial Statements and its signing authorities**
- According to Section 2 (40), Financial statement, in relation to a company, includes—
 - ❖ a balance sheet as at the end of the financial year;
 - ❖ a profit and loss account, or in the case of a company carrying on any activity not for profit, an income and expenditure account for the financial year;
 - ❖ cash flow statement for the financial year;
 - ❖ a statement of changes in equity, if applicable; and
 - ❖ any explanatory note annexed to, or forming part of, any document referred to in sub-clause (i) to sub-clause (iv).
- Provided that the financial statement, with respect to One Person Company, small company and dormant company, may not include the cash flow statement.
- Schedule III to the Act provides the formats of the Balance sheet & profit & loss statements together with Disclosure Requirements. The Financial Statements can be signed on behalf of the Board by the chair person of the Company or by two Directors out of which one shall be Managing Director if any, the C.E.O, the C.F.O and the Company Secretary of the Company.

ACCOUNTS & AUDIT OF COMPANIES (CONTD.)

✓ **Accounting Standards**

- According to Section 133 of the Act, the Central Government is to prescribe the Accounting Standards. There are two sets of Accounting Standards. The Standards under the Companies Accounting Standards Rules, 2006 and the IND AS standards.
- IND AS is presently applicable to all listed companies and companies having Net Worth equal to or more than Rs. 250 crores. Net worth is defined under Section 2(57) of the Act. The Companies Indian Accounting Standards (Second) Amendment Rules, 2019 have made significant changes in IND AS. 40 IND AS have been issued till date.

✓ **Auditing Standards**

- As per Section 2(7), Auditing Standards, means the standards of auditing or any addendum thereto for companies or class of companies referred to in sub-section (10) of section 143. There are at present 46 Engagement & Quality Control Standards issued by ICAI.

ACCOUNTS & AUDIT OF COMPANIES (CONTD.)

✓ **Consolidation of Financial Statements**

- Along with financial statement, consolidated financial statement of all subsidiaries shall be prepared and shall also be laid before the AGM. Subsidiary shall for the purpose of this requirement include associate company and joint venture. (Section 129)

✓ **Re opening & Re-casting of Books & Accounts**

- Re-casting or Re opening of Books of Accounts is not allowed unless an application in this regard is made by the Central Government, the Income Tax Authorities, SEBI or any other statutory body.
- Voluntary revision of financial statements or Board's Report can also be made with Tribunal's consent. (Section 131)

✓ **Fraud Reporting**

- Auditor to immediately report to the Central government, any offence involving fraud Rs. 1 crores or above which is being or has been committed against the Company by officers or employees of the company, which he believes to have been committed during the course of performance of his duties as an auditor. Section 143 (12).

GENERAL MEETINGS

✓ **First A.G.M**

- First Annual General Meeting of the Company shall be held within the period of 9 months from closure of its first financial year during the business hours i.e. 9a.m to 6p.m. Further, it shall be called at the registered office and in case of unlisted Company AGM can be held at any place in India provided consent is given by all the members in advance. (Section 96)

✓ **Notice of General Meeting**

- The notice of the general meeting shall be given at least 21 days before the meeting in writing or electronic mode. A shorter notice for the same can be given provided the consent is accorded in writing or electronic mode in the prescribed manner. (Section 101).

✓ **Voting by Electronic Means**

- The Central Government may prescribe the class or classes of companies and manner in which a member may exercise his right to vote by electronic means. (Section 108)

GENERAL MEETINGS (CONTD.)

✓ Ordinary & Special Resolution

- A resolution shall be ordinary resolution if it is required to be passed by a simple majority. A resolution shall be a special resolution if it is required to be passed by 75 % of the votes cast in its favour. Also, the notice to the members must have specified that the resolution would be moved as a special resolution in the meeting.

AREAS OF DUE DILIGENCE TO BE EXERCISED BY DIRECTORS IN GOVERNMENT COMPANIES

✓ **Financial**

- Fixed-term borrowings approaching maturity without realistic prospects of renewal or repayment; or excessive reliance on short-term borrowings to finance long-term assets.
- Indications of withdrawal of financial support by creditors.
- Negative operating cash flows indicated by historical or prospective financial statements.
- Adverse key financial ratios.
- Substantial operating losses or significant deterioration in the value of assets used to generate cash flows.

AREAS OF DUE DILIGENCE TO BE EXERCISED BY DIRECTORS IN GOVERNMENT COMPANIES(CONTD.)

✓ Financial

- Arrears or discontinuance of dividends.
- Inability to pay creditors on due dates.
- Inability to comply with the terms of loan agreements.
- Change from credit to cash-on-delivery transactions with suppliers.
- Inability to obtain financing for essential new product development or other essential investments
- Confirmation of loans not received
- Trade receivables & Trade Payables not confirmed by parties.
- Balances of Trade Receivables & Trade Payables of certain parties remain the same for more than 3 years.

AREAS OF DUE DILIGENCE TO BE EXERCISED BY DIRECTORS IN GOVERNMENT COMPANIES(CONTD.)

✓ Operating

- Management intentions to liquidate the entity or to cease operations.
- Loss of key management personnel without replacement.
- Loss of a major market, key customer(s), franchise, license, or principal supplier(s).
- Labor difficulties.
- Shortages of important supplies.
- Emergence of a highly successful competitor.
- Fixed Assets Register not maintained Verification not done at Regular Intervals .
- Inventory Records are incomplete & physical verification not done.
- Existence of significant slow moving & obsolete stock.

DUE DILIGENCE TO BE EXERCISED BY DIRECTORS (CONTD.)

✓ **Others**

- Non-compliance with capital or other statutory or regulatory requirements, such as solvency or liquidity requirements for financial institutions.
- Pending legal or regulatory proceedings against the entity that may, if successful, result in claims that the entity is unlikely to be able to satisfy.
- Changes in law or regulation or government policy expected to adversely affect the entity.
- Uninsured or underinsured catastrophes when they occur.

MISCELLANEOUS

✓ **Micro, Small & Medium Enterprises Act, 2006.**

Form MSME – I introduced vide ‘Specified Companies (Furnishing of information about payment to Micro and Small Enterprise Suppliers) Order, 2019.

✓ **Valuation & Registered Valuers** – Section 247 of the Act read with Companies (Registered Valuers & Valuation) Rules, 2017

✓ **AGILE Form No. INC- 35**

Any user who intends to incorporate a company through SPICE e-Form having registered office address can now apply for GSTIN through this AGILE Form.

THANK

YOU!