



The Companies Act 2013

Enlightening Nation

E-newsletter

DECEMBER, 2015

About the E-newsletter

Dear Users,

Thecompaniesact2013.com imports yet another innovation for all the valuable users in the form of e-newsletter. This is the first issue of the **December month** comprising contemporary articles, latest notifications, circulars & orders.

The notion is to render all the updates about Company law of the current month in a compiled format and serve a better pavement for easy accessibility to the users.



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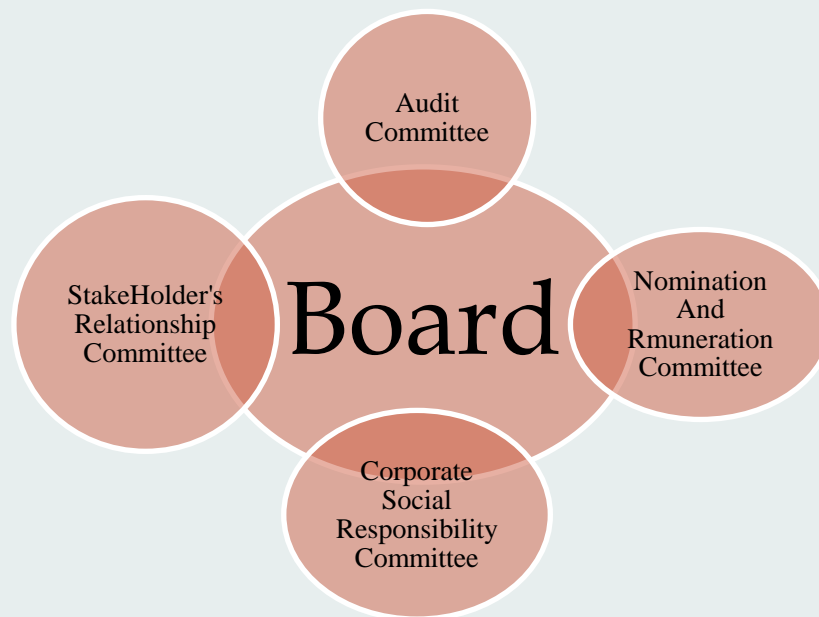
NOTIFICATION

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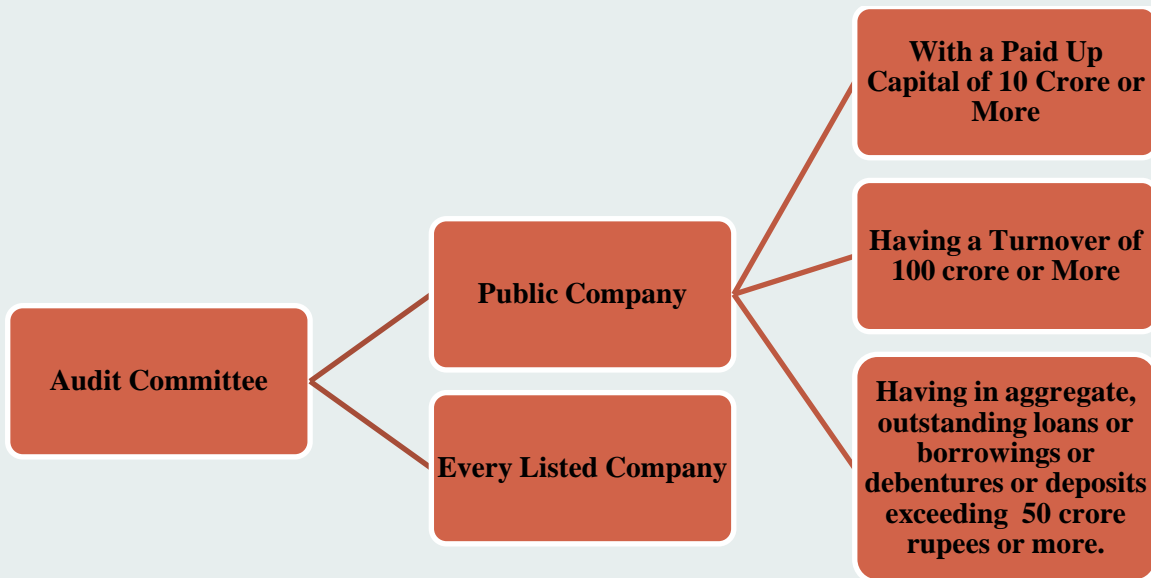
Committees of Board



I. AUDIT COMMITTEE (SECTION 177)



Requirement to constitute Audit Committee :-



Note :- The paid up share capital or turnover or outstanding loans, or borrowings or debentures or deposits, as the case may be, as existing on the date of last audited Financial Statements shall be taken into account .

Audit Committee	
As per Companies Act, 2013	As per SEBI(LODR)Regulations,2015
1. Composition of Audit Committee	
<ul style="list-style-type: none"> • Minimum 3 Directors forming *majority of Independent Directors. *However Audit Committee of Section 8 company is not requires to consists of majority of Independent Directors 	<ul style="list-style-type: none"> • Minimum 3 Directors from which 2/3rd shall be Independent Directors.
<ul style="list-style-type: none"> • Chairperson :- Chairperson shall be a person with ability to read and understand, the financial statement 	<ul style="list-style-type: none"> • Chairperson: - The chairperson of the audit committee shall be an independent director and he shall be present at Annual general meeting to answer shareholder queries.
<ul style="list-style-type: none"> • Qualification of Members:- Majority of members of Audit Committee including its Chairperson shall be persons with ability to read and understand, the financial statement. 	<ul style="list-style-type: none"> • Qualification of Members: - <ol style="list-style-type: none"> i. All members of audit committee shall be financially literate and ii. At least one member shall have accounting or related financial management expertise.

<ul style="list-style-type: none"> Board's Report shall disclose the Composition of Audit committee. 	
	<ul style="list-style-type: none"> Secretary: - The Company Secretary shall act as the secretary to the audit committee.
2. Meetings	
<ul style="list-style-type: none"> Meeting of the committee shall meet at such no. of time during a FY as stated:- <ul style="list-style-type: none"> a) In the articles of association of the Company, or b) In the Board Resolution passed for constitution of the Committee (In absent of above two conditions as per the provisions of section 173 of the Act which is applicable to Board Meeting) 	<ul style="list-style-type: none"> The audit committee shall meet at least four times in a year and not more than one hundred and twenty days shall elapse between two meetings.
3. Quorum for Committee meeting	
<ul style="list-style-type: none"> Quorum of Meeting of the committee shall be either as stated:- <ul style="list-style-type: none"> a) In the articles of association of the Company, or b) In the Board Resolution passed for constitution of the Committee (In absent of above two conditions as per the provisions of section 173 of the Act which is applicable to Board Meeting) 	<ul style="list-style-type: none"> The quorum for meeting shall either be <ul style="list-style-type: none"> a) two members or b) one third of the members of the audit committee, Whichever is greater, with at least two independent directors.
4. Terms of Reference	
<p>Every Audit Committee shall act in accordance with the terms of reference specified in writing by the Board which shall, inter alia, includes :-</p> <ol style="list-style-type: none"> the recommendation for appointment, remuneration and terms of appointment of auditors of the company; [However Audit Committee of Government Company can only recommend for remuneration of Auditors of Company] review and monitor the auditor's independence and performance, and effectiveness of audit process; examination of the financial statement and the auditors' report thereon; approval or any subsequent modification of transactions of the company with related parties; 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 scrutiny of inter-corporate loans and investments; valuation of undertakings or assets of the company, wherever it is necessary; evaluation of internal financial controls and risk management systems; Monitoring the end use of funds raised through public offers and related matters. 	<p>The role of the audit committee shall include the following:</p> <ol style="list-style-type: none"> oversight of the listed entity's financial reporting process and the disclosure of its financial information to ensure that the financial statement is correct, sufficient and credible; Recommendation of appointment, remuneration, and terms of appointment of Auditors; approval of payment to statutory auditors for any other services rendered by the statutory auditors; reviewing, with the management, the annual financial statements and auditor's report thereon before submission to the board for approval, with particular reference to: <ol style="list-style-type: none"> matters required to be included in the director's responsibility statement to be included in the board's report in terms of clause (c) of sub-section (3) of Section 134 of the Companies Act, 2013; changes, if any, in accounting policies and practices and reasons for the same; major accounting entries involving estimates based on the exercise of judgment by management; significant adjustments made in the

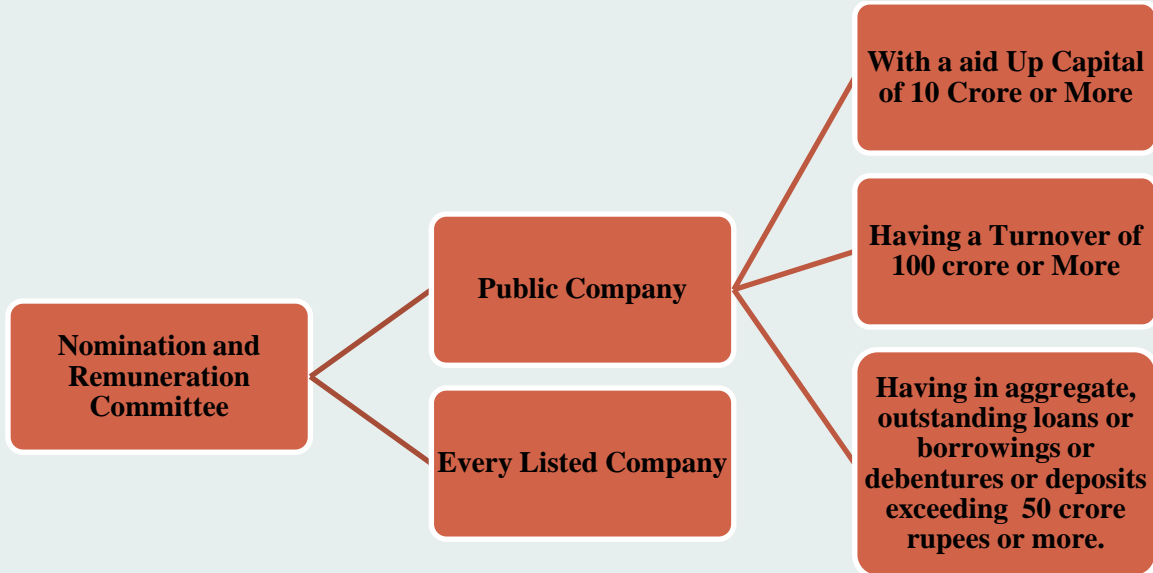
	<p>financial statements arising out of audit findings;</p> <p>e) compliance with listing and other legal requirements relating to financial statements;</p> <p>f) disclosure of any related party transactions;</p> <p>g) modified opinion(s) in the draft audit report;</p> <p>v. reviewing, with the management, the quarterly financial statements before submission to the board for approval;</p> <p>vi. reviewing, with the management, the statement of uses / application of funds raised through an issue (public issue, rights issue, preferential issue, etc.), the statement of funds utilized for purposes other than those stated in the offer document / prospectus / notice and the report submitted by the monitoring agency monitoring the utilization of proceeds of a public or rights issue, and making appropriate recommendations to the board to take up steps in this matter;</p> <p>vii. reviewing and monitoring the auditor's independence and performance, and effectiveness of audit process;</p> <p>viii. approval or any subsequent modification of transactions of the listed entity with related parties;</p> <p>ix. scrutiny of inter-corporate loans and investments;</p> <p>x. valuation of undertakings or assets of the listed entity, wherever it is necessary;</p> <p>xi. evaluation of internal financial controls and risk management systems;</p> <p>xii. reviewing, with the management, performance of statutory and internal auditors, adequacy of the internal control systems;</p> <p>xiii. reviewing the adequacy of internal audit function, if any, including the structure of the internal audit department, staffing and seniority of the official heading the department, reporting structure coverage and frequency of internal audit;</p> <p>xiv. discussion with internal auditors of any significant findings and follow up there on;</p> <p>xv. reviewing the findings of any internal investigations by the internal auditors into matters where there is suspected fraud or irregularity or a failure of internal control systems of a material</p>
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	<p>nature and reporting the matter to the board;</p> <p>xvi. discussions with statutory auditors before the audit commence, about the nature and scope of audit as well as post audit discussions to ascertain any area of concern;</p> <p>xvii. to look into the reasons for substantial defaults in the payment to the depositors, debenture holders, shareholders (in case of non-payment of declared dividends) and creditors;</p> <p>xviii. to review the functioning of the whistle blower mechanism;</p> <p>xix. approval of appointment of chief financial officer after assessing the qualifications, experience and background, etc. of the candidate;</p> <p>xx. Carrying out any other function as is mentioned in the terms of reference of the audit committee.</p> <p>xxi. The audit committee shall mandatorily review the following information:</p> <ol style="list-style-type: none"> a) management discussion and analysis of financial condition and results of operations; b) statement of significant related party transactions (as defined by the audit committee), submitted by management; c) management letters / letters of internal control weaknesses issued by the statutory auditors; d) internal audit reports relating to internal control weaknesses; and e) the appointment, removal and terms of remuneration of the chief internal auditor shall be subject to review by the audit committee. f) statement of deviations: <ul style="list-style-type: none"> • Quarterly statement of deviation(s) including report of monitoring agency, if applicable, submitted to stock exchange(s) in terms of Regulation 32(1). • annual statement of funds utilized for purposes other than those stated in the offer document/prospectus/notice in terms of Regulation 32(7).
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II. NOMINATION AND REMUNERATION COMMITTEE (SECTION 178)



Requirement to constitute Nomination and Remuneration Committee:-



Note: The paid up share capital or turnover or outstanding loans, or borrowings or debentures or deposits, as the case may be, as existing on the date of last audited Financial Statements shall be taken into account.

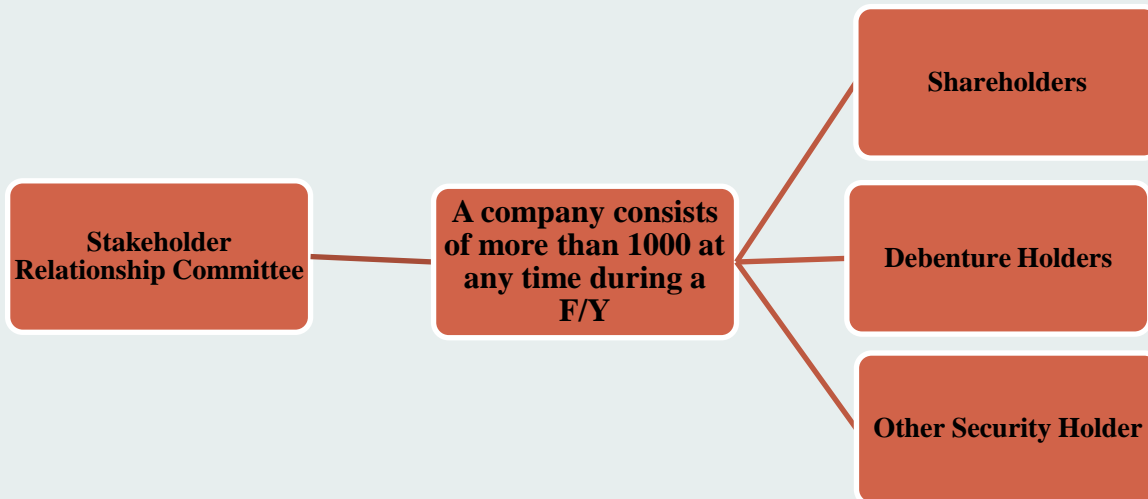
Nomination and Remuneration Committee	
As per Companies Act, 2013	As per SEBI(LODR)Regulations,2015
1. Composition	
<ul style="list-style-type: none"> Consists of Minimum 3 Non- Executive Directors out of which at least ½ shall be Independent Director 	<ul style="list-style-type: none"> Consists of Minimum 3 Non- Executive Directors out of which at least 50% shall be Independent Director. All directors shall be Non- Executive Director
<ul style="list-style-type: none"> Chairperson: - not specified. <p>Chairperson of the company (whether executive or non-executive) may be appointed as a member of the Nomination and Remuneration Committee but shall not chair such Committee.</p>	<ul style="list-style-type: none"> Chairperson :- The Chairperson shall be an independent director: The Chairperson of the nomination and remuneration committee may be present at the annual general meeting, to answer the shareholders' queries; however, it shall be up to the chairperson to decide who shall answer the queries.
2. Quorum of Meetings	
<ul style="list-style-type: none"> Quorum of meeting of the committee shall be either as stated:- <ol style="list-style-type: none"> In the articles of association of the Company, or In the Board Resolution passed for constitution of the Committee (In absent of above two conditions as per the provisions of section 173 of the Act which is applicable to Meeting) 	
3. Terms of Reference	

- | | |
|---|--|
| <ul style="list-style-type: none"> • Committee shall identify persons who are qualified to become directors and who may be appointed in senior management in accordance with the criteria laid down, recommend to the Board their appointment and removal and shall carry out evaluation of every director's performance. • Committee shall formulate the criteria for determining qualifications, positive attributes and independence of a director and recommend to the Board a policy, relating to the remuneration for the directors, key managerial personnel and other employees. | <ul style="list-style-type: none"> • Committee shall formulate the criteria for determining qualifications, positive attributes and independence of a director and recommend to the board of directors a policy relating to, the remuneration of the directors, key managerial personnel and other employees; • Committee shall formulate the criteria for evaluation of performance of independent directors and the board of directors; • Committee shall devise a policy on diversity of board of directors; • Committee shall identify persons who are qualified to become directors and who may be appointed in senior management in accordance with the criteria laid down, and recommend to the board of directors their appointment and removal. • Committee shall identify whether to extend or continue the term of appointment of the independent director, on the basis of the report of performance evaluation of independent directors; |
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Note: - Section 8 Company is not require to constitute Nomination and Remuneration Committee.

III. STAKEHOLDERS RELATIONSHIP COMMITTEE [SECTION 178]

Requirement to constitute Stakeholders Relationship Committee

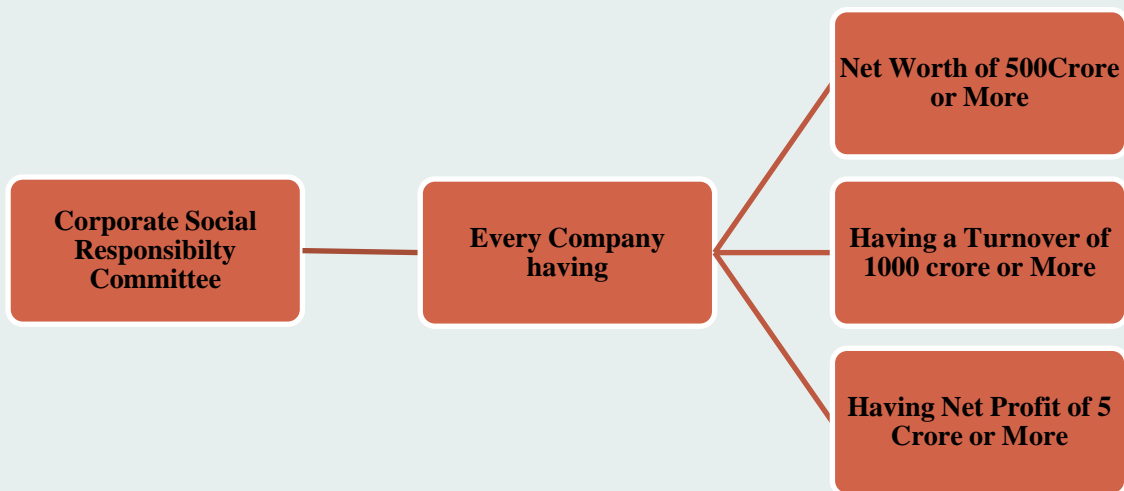


Stakeholder Relationship Committee	
As per Companies Act, 2013	As per SEBI(LODR)Regulations,2015
1. Composition	
<ul style="list-style-type: none"> The Committee shall consist of Chairmen and such other members as may be decided by the Board. 	
2. Chairperson	
<ul style="list-style-type: none"> The chairperson of this committee shall be a non-executive director. 	
3. Quorum of the Meeting	
<ul style="list-style-type: none"> Quorum of meeting of the committee shall be either as stated:- <ol style="list-style-type: none"> In the articles of association of the Company, or In the Board Resolution passed for constitution of the Committee (In absent of above two conditions as per the provisions of section 173 of the Act which is applicable to Board Meeting) 	
4. Term of Reference	
Committee shall consider and resolve the grievances of security holders of the company.	The Committee shall consider and resolve the grievances of the security holders of the listed entity including complaints related to transfer of shares, non-receipt of annual report and non-receipt of declared dividends.

IV. CORPORATE SOCIAL RESPONSIBILITY COMMITTEE [SECTION 135]



Requirement to constitute Corporate Social Responsibility Committee



Corporate Social Responsibility Committee	
1. Composition	
<ul style="list-style-type: none">The Corporate Social Responsibility Committee shall consist of three or more directors, out of which at least one director shall be an independent director, however<ol style="list-style-type: none">an unlisted public company or a private which is not required to appoint an independent director pursuant to sub-section (4) of section 149 of the Act, shall have its CSR Committee without such director ;a private company having only two directors on its Board shall constitute its CSR Committee with two such directors;With respect to a foreign company covered under these rules, the CSR Committee shall comprise of at least two persons of which one person shall be as specified under clause (d) of sub-section (1) of section 380 of the Act and another person shall be nominated by the foreign company. <p>Note:- The Board's Report of Company shall contain the disclosure regarding composition CSR Committee.</p>	
2. Quorum of the meeting	
<ul style="list-style-type: none">Quorum of meeting of the committee shall be either as stated:-<ol style="list-style-type: none">In the articles of association of the Company, orIn the Board Resolution passed for constitution of the Committee(In absent of above two conditions as per the provisions of section 173 of the Act which is applicable to Board Meeting)	

3. Terms of Reference

The Corporate Social Responsibility Committee shall

- Formulate and recommend to the Board, a Corporate Social Responsibility Policy which shall indicate the
- activities to be undertaken by the company as specified in Schedule VII;
- Recommend the amount of expenditure to be incurred on the activities referred to in clause (a) and
- Monitor the Corporate Social Responsibility Policy of the company from time to time.

PENALTY FOR CONTRAVENTION



In case of any contravention of Section 177 and 178

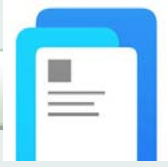
The company shall be punishable with fine which shall not be less than 1 lakh rupees but which may extend to 5 lakh rupees;

Every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to 1 year *or* with fine which shall not be less than 25000 rupees but which may extend to 1 lakh rupees or with both.



CONCLUSION.....

The Companies Act 2013 sets out an advanced framework for board functioning by division of core board functions and their delegation to committees of the board. While the audit committee and the nomination and remuneration committee provide the back end infrastructure for boards, the stakeholder's relationship committee and CSR Committee have been entrusted with the task of interaction with key stakeholders. Irrespective of their function, each of the committees would act as a "check and balance" on the powers of the board, by ensuring greater transparency and accountability in its functioning.



NOTIFICATION

A. NOTIFICATION NO S. O. 3388(E).DATED 14.12.2015

Commencement of section 13 & 14 of the Companies (Amendment) Act, 2015

In exercise of the powers conferred by sub-section (2) of section 1 of the Companies (Amendment) Act, 2015 (21 of 2015), the Central Government hereby appoints the 14th day of December, 2015 as the date on which the provisions of section 13 and 14 of the said Act shall come into force.

B. NOTIFICATION NO G.S.R(E) DATED 14.12.2015

Companies (Meetings of Board and its Powers) Second Amendment Rules, 2015

1. Alter rule 6, the following rule shall be inserted, namely:-

'6A. omnibus approval for related party transactions on annual basis-

All related party transactions shall require approval of the Audit Committee and the Audit Committee may make omnibus approval for related party transactions proposed to be entered into by the company subject to the following conditions, namely:-

- 1) The Audit Committee shall, after obtaining approval of the Board of Directors, specify the criteria for making the omnibus approval which shall include the following, namely:-
 - a. maximum value of the transactions, in aggregate, which can be allowed under the omnibus route in a year;
 - b. the maximum value per transaction which can be allowed;
 - c. extent and manner of disclosures to be made to the Audit the time of seeking omnibus approval;
 - d. review, at such intervals as the Audit Committee may deem lit, transaction entered into by the company pursuant to each of omnibus approval made ;
 - e. Transactions which cannot be subject to the omnibus approval Audit Committee.
- 2) The Audit Committee shall consider the following factors while specifying the criteria for making omnibus approval, namely:
 - a) Repetitiveness of the transactions (in past or in future);
 - b) Justification for the need of omnibus approval.
- 3) The Audit Committee shall satisfy itself for transactions of repetitive nature and that such approval is within interest of the company.
- 4) The omnibus approval shall contain or indicate the following: -
 - a. Name of the related parties;
 - b. Nature and duration of the transaction;

- c. Maximum amount of transaction that can be entered into;
- d. The indicative base price or current contracted price and the formula for variation in the price, if any; and
- e. any other information relevant or important for the Audit Committee to take a decision on the proposed transaction;

Provided that where the need for related party transaction cannot be foreseen and aforesaid details are not available, audit committee may make omnibus approval for such transactions subject to their value not exceeding rupees one crore per transaction.

- 5) Omnibus approval shall be valid for a period not exceeding one financial year and shall require fresh approval after the expiry of such financial year.
 - 6) Omnibus approval shall not be made for transactions disposing of the undertaking of the company.
 - 7) Any other conditions as the Audit Committee may deem fit.
2. Rule 10 shall be omitted.
 3. In rule 15, in sub-rule (3), for the words "special resolution", wherever they occur, the word resolution' shall be substituted.

C. NOTIFICATION NO. G.S.R(E)DATED 14.12.2015

The Companies (Audit and Auditors) Amendment, Rules, 2015

1. For rule 13, the following rule shall be substituted' namely:-

13. Reporting of frauds by auditor and other matters:

1. If an auditor of a company in the course of the performance of his duties as statutory auditor, has reason to believe that an offence of fraud, which involves or is expected to involve individually an amount of rupees one crore or above, is being or has been committed against the company by its officers or employees, the auditor shall report the matter to the Central Government.
2. The auditor shall report the matter to the Central Government as under:-
 - a) The auditor shall report the matter to the Board or the Audit Committee, as the case may be, immediately but not later than two days of his knowledge of the fraud seeking their reply or observations within forty-five days;
 - b) On receipt of such reply or observations, the auditor shall forward his report and the reply or observations of the Board or the Audit Committee along with his comments (on such reply or observations of the Board or the Audit Committee) to the Central Government within fifteen days from the date of receipt of such reply or observations;
 - c) In case the auditor fails to get any reply or observations from the Board or the Audit Committee within the stipulated period of forty-five days, he shall forward his report to the Central Government along with a note containing the details of his report that was earlier

forwarded to the Board or the Audit Committee for which he has not received any reply or observations;

- d) The report shall be sent to the , Ministry of Corporate Affair in a sealed cover by Registered Post with Acknowledgement Due or by Speed Post followed by an e-mail in confirmation of the same;
- e) The report shall be on the letter-head of the auditor containing postal address email address and contact telephone number or mobile number and be signed by the auditor with his seal and shall indicate his Membership Number; and
- f) The report shall be in the form of a statement as specified in Form ADT-4.

3. In case of a fraud involving lesser than the amount specified in sub-rule (1), the auditor shall report the matter to Audit Committee constituted under section 177 or to the Board immediately but not later than two days of his knowledge of the fraud and he shall report the matter specifying the following:-

- a) Nature of Fraud with description;
- b) Approximate amount involved: and
- c) Parties involved.

4. The following details of each of the fraud reported to the Audit Committee or the Board under sub rule (3) during the year shall be disclosed in the Board's Report:-

- a) Nature of Fraud with description;
- b) Approximate Amount involved;
- c) Parties involved, if remedial action not taken: and
- d) Remedial actions taken.

5. The provision of this rule shall also apply, mutatis mutandis, to a Cost Auditor and a Secretarial Auditor during the performance of his duties under section 148 and section 204 respectively.;

2. In the principal rules, after Rule 14 and before FORM NO. ADT-I, insert the word "Annexure";

3. In the principal rules, in Form No. ADT-4,-

A. in line 3, for the word, figures and brackets..Rule 13 (4)', the word, figures, letter and brackets "rule 13(2)(0" shall be substituted; and

B. in line 25, in item No. (10), for the word, figures and brackets, rule 13 (1), the word, figures, letter and brackets "rule 13(2Xa),'shall be substituted.

D. NOTIFICATION NO S.O(E) DATED 31.12.2015

Notification under section 458 of Companies Act, 2013: Delegating of powers to RDs under section 208 of the said Act

1. In exercise of the powers conferred by section 458 of the Companies Act, 2013 (18 of 2013) the Central Government hereby delegates to the Regional Directors at Mumbai, Kolkata, Chennai, Delhi, Ahmadabad, Hyderabad and Shillong, the power vested in it under section 208 of the said Act for receiving the report from the Registrar (having jurisdiction over the place of registered office of the company concerned) or from the Inspector where such report recommends action for violation of offences under the said Act for which imprisonment of less than two years is provided, (except for violation of offences under Chapter III, IV section 127,177 and 178 for which the report shall be received by the Central Government), subject to the conditions, namely:-
2. On receipt of the report referred to in paragraph 1, the Regional Director –
 - a) shall examine the report and obtain legal advice, if required;
 - b) shall direct initiation of prosecution if he agrees with the recommendation of the Registrar or inspector to initiate prosecution against the company, officers or employees, Present or past of the company, or any other person connected with the affairs of the company; and
 - c) shall inform the Central Government (along with reasons for non-acceptance of recommendation of Registrar or Inspector, wherever he disagrees) about the action taken on the report submitted by Registrar or Inspector.
3. The Regional Director shall, on receipt of the report, where such report recommends action for violation of offences other than those specified in paragraph 1, examine the same, obtain legal advice, if required, and submit it to the Central Government seeking initiation of prosecution.

CIRCULARS

GENERAL CIRCULAR NO. 16/2015 DATED 31.12.2015

Subject: - Relaxation of additional fees and extension of last date of in filing of forms MGT-7 (Annual Return) and AOC-4 (Financial Statement) under the Companies Act, 2013- State of Tamil Nadu and UT of puducherry -

In continuation of this Ministry's General circular 15/2015 dated 30.11.2015, keeping in view the requests received from various stakeholders stating that due to heavy rains and floods in the State of Tamil Nadu and UT of puducherry, the normal life/work was affected, it has been decided to relax the additional fees payable for the State of Tamil Nadu and UT of Puducherry on e-forms AOC-4, AOC (CFS) AOC-4 XBRL and e- Form MGT-7 up to 30.01,2016, wherever additional fee is applicable.

- [News Highlight :- Corp Affairs Min extends deadline for annual filings to Dec 30;](#)
- [MCA News:- Versions of Forms DIR-3, DIR-6, FC-4, MGT-14, INC-7, INC-22, SH-7, INC-29, DIR-12, CHG-1 and Form 23ACA are modified w.e.f 02 Dec 2015.;](#)
- [Procedure for Compounding of filing of Forms;](#)
- [\(Listing Obligations and Disclosure Requirements\) Regulations, 2015;](#)
- [Provision for Website under Listing Regulation,2015;](#)
- [News Highlight :- Govt starts process for selecting NCLT members;](#)
- [News Highlight :- Over 2,000 companies do not have women directors: Government;](#)
- [Independent Director;](#)
- [News Highlight:- No need for separate disclosure on setting up ICC: MCA;](#)
- [MCA News:- Versions of Forms GNL-4, INC-28, CRA-2, INC-2, ADJ, FC-1, AOC-CFS and FC-4 are likely to be modified w.e.f 09 Dec 2015.;](#)
- [News Highlight :- No proposal to relax e-filing norms under Companies Act: Government;](#)
- [Tax Benefits on Corporate Social Responsibility;](#)
- [FAQ's on Corporate Social Responsibility;](#)
- [News Highlight :- Ease of doing business: Government plans to introduce new integrated form for company registration;](#)
- [News-Highlight:- Directors pay capped at 11% of public cos' annual profit;](#)
- [S. O. 3388\(E\) :- Notification of Companies Amendment Act,2015;](#)
- [Companies \(Meeting of Board and its Powers\) Second Amensment Rules, 2015;](#)
- [Companies \(Audit and Auditors\) Amendment Rules,2015;](#)
- [News Highlight :- Corporate Affairs Ministry to launch prosecution against India Cements on IPL issues](#)
- [Concept of loan to Directors;](#)
- [NEWS HIGHLIGHT:- Govt sets threshold for fraud reporting by auditors at Rs 1 crore;](#)
- [SEBI\(Listing Obligations And Disclosure Requirements\) Regulations,2015;](#)
- [Relaxation of additional fees and extension of last date of in filing of forms MGT-7 \(Annual Return\) and AOC-4 \(Financial Statement\) under the Companies Act, 2013- State of Tamil Nadu and UT of Puducherry.;](#)

EDITORS COLUMN

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