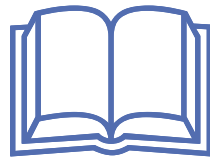
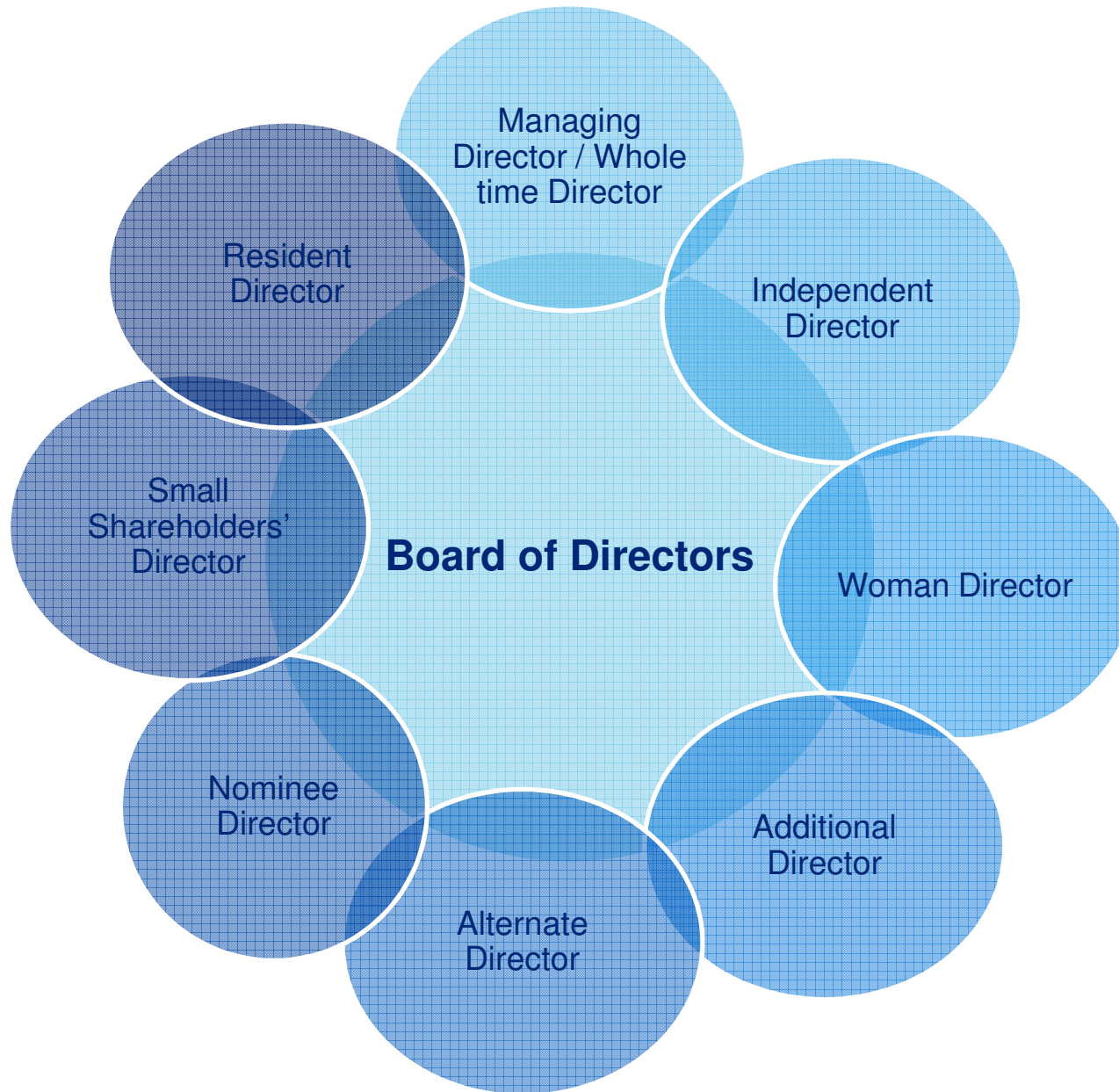


PRESENTATION BY



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**APPOINTMENT AND
QUALIFICATIONS OF
DIRECTORS (SEC 149-172)
(+)
COMPANIES(APPOINTMENT &
QUALIFICATION OF
DIRECTORS) RULES,2014**



APPOINTMENT & QUALIFICATIONS OF DIRECTORS (SEC 149)

- Minimum 2 directors in a private company, 3 directors in a public company and one director in an OPC
- Maximum 15 directors
- Special resolution required for more than 15 directors.

WOMAN DIRECTOR

- Every listed company and other public companies having a **paid up capital of Rs 100 crore or more or turnover of Rs 300 crore or more** to appoint at least one woman director **within one year**.
- Intermittent vacancy of woman director to be filled up not later than three months or next board meeting, **whichever is later**

RESIDENCY

- **At least one director to stay in India for not less than 182 days in the previous calendar year.**

MCA Clarification: During the calendar year 2014, the director(s) should be resident in India for more than 136 days.

APPOINTMENT & QUALIFICATIONS OF DIRECTORS (SEC 149)

INDEPENDENT DIRECTOR

- Listed public company; **other public companies** having a paid up capital of Rs 10 crore or more or turnover of Rs 100 crore or more or having outstanding loan, debentures and deposits exceeding Rs 50 crore or more to have 1/3rd Board strength as Independent Director within 1 year – **(Private companies exempted)**
- Atleast 2 directors shall be there in the above companies; higher number of independent directors may be required due to composition of Audit Committee
- Independent director defined exhaustively u/s 149(6).
- Every independent director to give at the first meeting a declaration in every financial year that he is independent.
- **Independent directors to abide by the code – Schedule-IV.**

APPOINTMENT & QUALIFICATIONS OF DIRECTORS (SEC 149)

- The Code inter alia sets out (a) Role and functions of Independent Directors (b) their duties (c) manner of appointment (d) holding of at least one meeting of independent directors in a year without the attendance of non-independent directors and members of management
- No remuneration other than sitting fee, commission on profit and reimbursement of expenses to Independent Directors
- No stock Option to Independent Directors
- Independent director to hold office up to 5 consecutive years
- Reappointment on passing a **special resolution** for next five years and disclosure in Board's Report.
- Intermittent vacancy of independent director to be filled up not later than three months or next board meeting, **whichever is later**

APPOINTMENT & QUALIFICATIONS OF DIRECTORS (SEC 149)

- Break of three years necessary after two terms for reappointment.
- No association with the company directly or indirectly in any capacity **in the said three years**.
- **Existing tenure of the independent director not to be counted.**
- A person who has already served as an Independent Director for five years or more in a company as on 01.10.2014 shall be eligible for appointment on completion of his present term for one more term of up to 5 years only.
- Independent director not liable to retire by rotation.
- Explanatory statement to the notice required in case of appointment of independent director that he fulfills the conditions specified in the Act.

INDEPENDENT DIRECTORS – ADDITIONAL REQUIREMENTS / DISCLOSURES UNDER EQUITY LISTING AGREEMENT

- **Requisition with deposit of Rs 1 lac required for appointment of ID at the shareholders' meeting**
- **Independent director to be excluded while computing directors retiring by rotation in every AGM.**
- **Formal letter of appointment** to be issued to IDs within one working day from the date of appointment of ID
- **Performance evaluation of Independent Directors:**
 - a) Nomination Committee to lay down the evaluation criteria for performance evaluation of IDs

INDEPENDENT DIRECTORS – ADDITIONAL REQUIREMENTS / DISCLOSURES UNDER EQUITY LISTING AGREEMENT

- b) Company to disclose the criteria for performance evaluation as IDs in its Annual Report
- c) On the basis of the report of performance evaluation, it shall be determined whether to extend or continue the term of Independent Directors
- **Separate Meetings of Independent Directors** (at least one meeting a year) without the presence of non independent directors and members of management
- The company to provide suitable training to independent directors to familiarize them with the company, their roles, rights, responsibilities in the company. **Details of such training imparted to be disclosed in the Annual Report.**

INDEPENDENT DIRECTORS – ADDITIONAL REQUIREMENTS / DISCLOSURES UNDER EQUITY LISTING AGREEMENT

Liabilities of Independent Directors

- Independent Directors shall be held liable, only in respect of such acts of omission or commission by a company which had occurred with his knowledge, attributable through board process and with his consent or connivance or where he had not acted diligently.
- **He shall be deemed as an ‘Officer who is in default’** for penal provisions if he is aware of a contravention of the provisions of 2013 Act by virtue of receipt of Board proceedings or participation in the Board proceedings without objecting to the same or where such contravention had taken place with his consent or connivance.

APPOINTMENT OF DIRECTOR BY SMALL SHAREHOLDER (SECTION 151)

- A listed company **may have** one director elected by small shareholders (that is, shareholder holding shares of nominal value not more than Rs 20,000)
- Requisition notice, of not less than 1000 small shareholders or 1/10th of the total number of such small shareholders, **whichever is less**, is required
- Company **suo motu** may appoint a small shareholder director
- Small shareholder director:
 - (a) is not liable to retire by rotation
 - (b) his tenure on the board not to exceed 3 consecutive years
 - (c) not eligible for re-appointment
 - (d) shall meet with the criteria of independence under Section 149(6)
 - (e) not to hold position as small shareholder director in more than two companies at the same time.

RIGHT OF PERSONS OTHER THAN RETIRING DIRECTORS TO STAND FOR DIRECTORSHIP (SECTION 160)

- Proposal for appointment of director (**other than directors retiring by rotation**) with notice and deposit of Rs. 1 lakh – 14 days before meeting.
- Members to be informed at least seven days before the meeting
- Members with e-mail address to be communicated
- **Requisition notice to be placed on website of the company, if any.**
- Deposit to be refunded if the person gets elected or gets more than 25% of the valid votes cast in his favour

APPOINTMENT OF ADDITIONAL / ALTERNATE/ NOMINEE DIRECTOR (SECTION 161)

- Additional director to hold office up to next AGM.
- Board not to appoint a person as additional director who fails to get elected in a general meeting.
- An alternate director for a director cannot act as alternate for another director.
- A director may act in dual capacity for himself and an alternate for any other director.
- **Alternate director for an independent director should be qualified for appointment as an independent director**
- Alternate director to vacate office if the original director **returns to India**
- Causal vacancy of a director appointed by a company in general meeting may be filled at Board meeting

DISQUALIFICATIONS FOR APPOINTMENT OF DIRECTOR – SECTION 164

Additional disqualifications over and above section 274(1) of 1956 Act:

- Order passed by the Tribunal disqualifying a person for appointment.
- **Person convicted of the offence dealing with related party transactions during the last preceding 5 years.**
- Person convicted of any offence and sentenced to imprisonment for 7 years or more.

➤ No person who is or has been a director of a company which:

a) Has not filed financial statements / annual returns **for three years;**

a) Has failed to repay deposits, redeem debentures, interest thereon or failed to pay dividend declared **and such failure continues for one year or more**

Shall be eligible to be reappointed as a director in the same company or any other company for a period of 5 years.

NUMBER OF DIRECTORSHIPS (SEC 165)

- No person to hold office in more than in 20 companies at the same time including alternate directorship **and directorship in private companies.**
- Maximum 10 public companies including private companies which are either holding or subsidiary of a public company.
- Only directorship in companies incorporated outside India excluded.
- **Members, by special resolution, may specify lesser number.**
- **As per Clause 49 of Listing Agreement**
 - (a) A person shall not serve as an independent director in more than **seven listed companies**
 - (b) A WTD in any listed company can serve as an independent director in not more than **three listed companies**

- Excess than specified here **to be regularized within one year from commencement of the Act.**
- ROC and company to be informed about resignation as a director (in case of excess in number).
- Company to inform the resignation to RoC in **Form DIR-12** and post the information on its website, if any
- **Resignation** of a director for compliance with the limits **is effective immediately** on despatch of letter of resignation.

DUTIES OF DIRECTORS (SECTION 166)

- Duties of Directors are as under:
 - a) A director of a company shall act in accordance with the company's Articles.
 - b) A director of a company shall act in good faith in order to promote the objects of the company for the benefit of its members as a whole and in the best interests of the company, its employees, the shareholders, the community and the environment.
 - c) A director of a company shall exercise his duties with due and reasonable care, skill and diligence and shall exercise independent judgement.

- d) A director of a company shall not involve in a situation in which he may have a direct or indirect interest that conflicts or possibly may conflict, with the interest of the company.
- e) A director of a company shall not achieve or attempt to achieve any undue gain or advantage either to himself or his relatives, partners or associates and if such director is found guilty of making undue gain, he shall be liable to pay an amount equal to that gain to the company.
- f) A director of a company shall not assign his office and any assignment so made shall be void.
- g) Director contravening is punishable with fine – minimum Rs 1 lakh; maximum Rs 5 lakh

VACATION OF OFFICE OF DIRECTOR (SEC 167)

Additional Grounds:

- ➡ Director absenting himself from all meetings of Board held during a period of 12 months **with or without leave of absence.**
- ➡ Director **convicted by a court of any offence** and sentenced to imprisonment for not less than 6 months.

Note: The office to be vacated even if he has filed an appeal against the order of such Court

- ➡ Becomes disqualified by an order of Court/Tribunal
- ➡ He, having been appointed as director by virtue of his holding any office or employment in the holding, subsidiary or associate company ceases to hold such office or other employment in the company
- ➡ Penal provisions enhanced including imprisonment.

RESIGNATION OF DIRECTOR (SECTION 168)

- ➡ **Board to take note of resignation** when received in writing and inform ROC and include in the Directors' Report.
- ➡ **Director to forward copy of resignation with detailed reasons for resignation to ROC within 30 days.**
- ➡ Resignation to take effect from the date of receipt of the notice by the company **or** the date specified by the director **whichever is later.**
- ➡ The company to inform RoC the resignation of director in **Form DIR – 12** within 30 days and post the intimation on **its website** if any
- ➡ **Promoters or in their absence, the Central Government to appoint minimum directors if all directors resign.**

REMOVAL OF DIRECTORS (SECTION 169)

- ➡ A company may, by ordinary resolution, remove a director
- ➡ **Special notice** required of any resolution to remove a director or appoint some one in his place upon removal.
- ➡ Company to send copy of the Special notice to the director
- ➡ Company to send representation, if any, received from director to members or to be read out at the meeting.
- ➡ Director removed shall not be reappointed as director by the Board.
- ➡ The directors appointed **according to principle of proportional representation or by the Tribunal under Section 242 (oppression and mismanagement)** cannot be removed.

REGISTER OF DIRECTORS & KMPS AND THEIR SHAREHOLDING (SECTION 170)

- ➡ Every company to keep at its registered office a register of its directors **and KMPS** containing various particulars as specified under Rule 17 of the Companies (Appointment and Qualification of Directors) Rules, 2014
- ➡ The Company to include in the said Register details of securities held by Directors **and KMPS**
 - (a) in the company
 - (b) in its holding company
 - (c) in its subsidiaries
 - (d) in its co-subsidaries and
 - (e) in its associate companies**

REGISTER OF DIRECTORS & KMPS AND THEIR SHAREHOLDING (SECTION 170)

- ☞ The Register is open for inspection by Members and they have the right to take extracts therefrom and Copies thereof;
- ☞ The Register to be kept open at every AGM and is accessible to any person attending the meeting

Key Managerial Person's (KMP's)



- ❑ Every listed company and every other public company having a paid-up share capital of 10 crore rupees or more shall have whole-time key managerial personnel.
- ❑ Now, a company other than companies mentioned above and which has a paid up share capital of Rs. 5 Crore or more shall have a whole-time Company Secretary
- ❑ KMP shall not hold office in more than one company except in subsidiary company at the same time. *(transitional period of 6 months available)*
- ❑ Any vacancy in the office of KMP shall be filled up within the period of 6 months.
- ❑ Appointments of the KMP shall be made in the Board Meeting.

Board Meeting

Considering the Companies Act, 2013, Companies (Meetings of Board and its powers) Rules, 2014, Secretarial Standard – 1* and relevant clauses of Listing Agreement, following are the compliance requirements for convening the Meetings of the Board of Director's

Time

- At least 4 meetings of Board every year in such a manner that not more than 120 days shall intervene between 2 consecutive Board meetings

Notice

- Not less than 7 days notice in writing to every director at his address registered with the company and such notice shall be sent by hand delivery or by post or by **electronic means**.

Shorter Notice

- Board Meeting may be called at shorter notice subject to that at least one independent director ("ID"), shall present at the meeting.

Shorter Notice

- In case of absence of ID, decisions taken shall be circulated to all the directors and shall be final only on ratification thereof by at least one ID, if any.

*Agenda

- Agenda, setting out the business to be transacted at the meeting, and notes on Agenda should be given at least 7 days before the meeting.

Quorum

- 1/3rd of the total strength or 2 directors whichever is higher. (*Participation through VC or any other audio visual mode shall be counted for the purpose of quorum*)

**Section 118 of the Act, provide that the Companies shall observe the SS – 1 & 2, however the final SS are not yet approved by the CG, our review is based upon the SS existing as on date, which might undergo change upon issuance of final SS by CG.*

Board Meeting

Applicable provisions - Board Meeting through Video Conferencing or other Audio Visual means

VC/AV
C

- Make necessary arrangements to avoid failure of video or audio visual connection

Notice

- Notice of the meeting shall inform the directors regarding the participation option available to them i.e. video conferencing mode or other audio visual means. **(E mode)**

E mode

- Director intending to participate through E - mode shall give prior intimation to the Chairperson or the company secretary of the company

E mode

- Director, who desire, to participate through E mode may intimate his intention through the electronic mode at the beginning of the calendar year and such declaration shall be valid for 1 calendar year

E mode

- In the absence of any intimation, it shall be assumed that the director shall attend the meeting in person.

Place

- Scheduled venue of the meeting as set forth in the notice convening the meeting, which shall be in India, shall be deemed to be the place of the meeting

Register

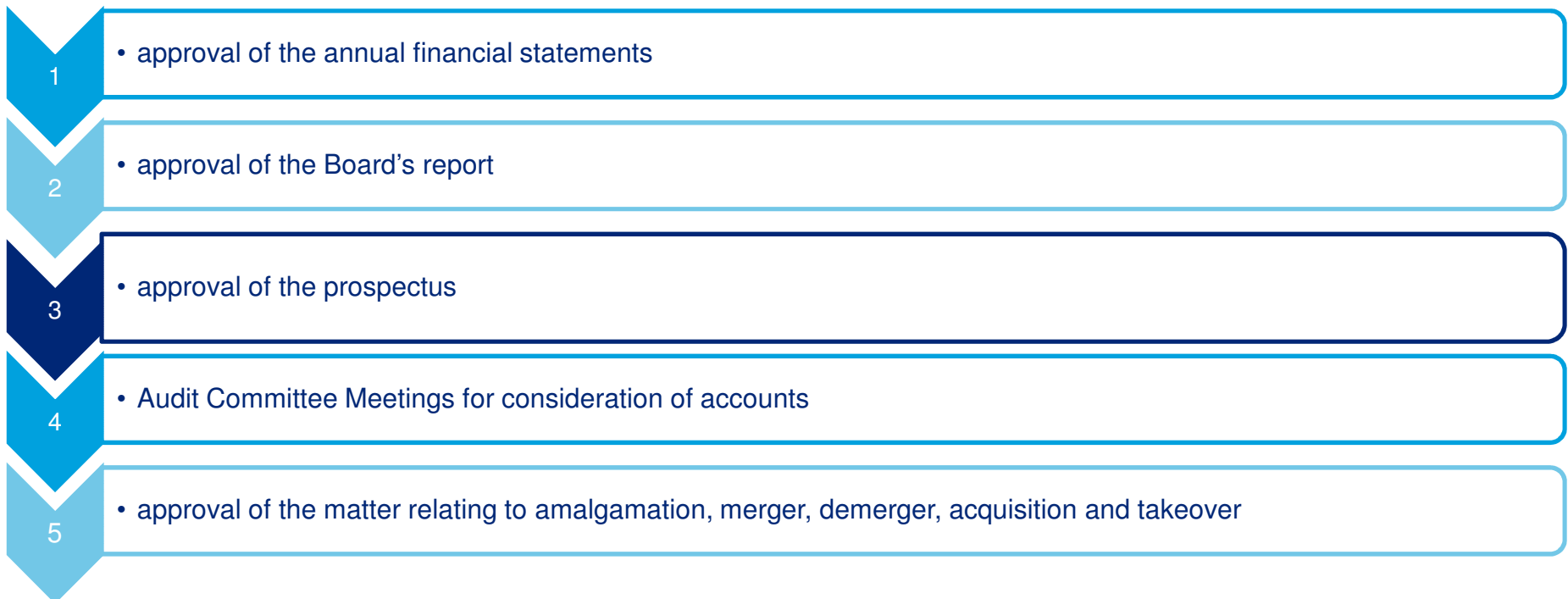
- Registers shall be deemed to have been signed by the Directors participating through electronic mode, if they have given their consent to this effect and it is so recorded in the minutes of the meeting

Identity

- Every participant shall identify himself for the record before speaking on any item of business on the agenda

Board Meeting

Don'ts of VCC or AVs means



Specific provisions w.r.t the Minutes of the Board Meeting held through VC or other audio visual mode:

- Minutes shall disclose the particulars of the directors who attended the meeting through video conferencing or other audio visual means.
- Draft minutes of the meeting shall be circulated among all the directors within 15 days of the meeting either in writing or in electronic mode as may be decided by the Board.
- Every director who attended the meeting shall confirm or give his comments in writing within 7 days or some reasonable time as decided by the Board failing which his approval shall be presumed.

Minutes

Every company shall cause minutes of the proceedings of **every general meeting**, and every **resolution passed by postal ballot** and **every meeting of its Board of Directors or of every committee** of the Board.

1

• **Distinct Minute book** shall be maintained for each type of meeting namely Board, Committees, shareholders, creditors.

2

• **Resolution passed by Postal Ballot** shall be recorded in the Minutes book as if they are passed in GM.

3

• **Minutes are required to be kept** within 30 days of the conclusion of every such meeting in the books kept for that purpose with their pages consecutively numbered along with the date of such entry.

4

• **Brief Report on Postal Ballot** shall be entered in the minutes book along with the date of such entry within 30 days from the date of passing of resolution.

5

• **Signing of Minutes** – Board or Committee Minutes (Chairman of the said meeting or Chairman of the next succeeding Meeting)

6

• **Signing of Minutes** – General Meeting (chairman of the same meeting within the aforesaid period of 30 days or in the event of the death or inability of Chairman, any director authorized by the Board)

7

• **General Meeting minutes book** - shall be kept at the Registered office, preserved permanently and kept in the custody of the Company Secretary or any other director authorized by Board.

8

• **Board Meeting minutes book** - shall be kept at the **Registered office or any other place as Board may decide**, preserved permanently and kept in the custody of the Company Secretary or any other director authorized by Board.

9

• **In case of Board or Committee Meeting** – Names of Director's present and name of the dissenting director shall be mentioned.

10

• Every company shall observe Secretarial Standards for Board and Shareholders Meeting as approved by CG

Board level Committees

Pillars of Corporate Governance



Committees of Board

Particulars	Audit committee	Nomination and Remuneration committee (NRC)	Stakeholder relationship committee (SRC)	Corporate Social Responsibility committee (CSRC)
Applicability	Listed company Public company with paid up capital ≥ 10 crores; or Turnover of ≥ 100 crores; or aggregate loans, borrowings, debentures or deposits > 50 crores	Listed company Public company with paid up capital ≥ 10 crores; or Turnover of ≥ 100 crores; or aggregate loans, borrowings, debentures or deposits > 50 crores	Where total number of shareholders, deposit holders, debenture holders and other security holder exceeds 1,000 at any time during a FY	Company having: <ul style="list-style-type: none"> • net worth of INR 500 crores or more; or • turnover of INR 1000 crores or more; or • net profit of INR 5 crore or more during any FY
Constitution	Minimum 3 directors, majority being IDs	Minimum 3 or more NED of which at least $\frac{1}{2}$ shall be IDs	To be decided by BOD	Minimum 3 Directors of which at least 1 shall be ID For private limited company not required to have independent director.

Audit Committee

Additional requirements – Companies Act, 2013

- ❑ **Disclosure in the Board's Report** to be given regarding the constitution of the Audit Committee;
- ❑ Disclosure in the Board Report, if Board has not accepted any **recommendation of the Audit Committee**.
- ❑ **Transition period** of 1 year is available to the existing companies for reconstitution of the Audit Committee.
- ❑ Even MCA clarified that constitution of Audit Committee under this Act shall be made within 1 year from the commencement of these rules or appointment of Independent Director by them, whichever is earlier.
- ❑ **Increased responsibilities of Audit Committee:**
 - Approval of related party transactions
 - Scrutiny of inter-corporate loans and investments
 - Valuation of undertakings or assets of the company, wherever it is necessary
 - Evaluation of internal financial controls (IFC) and risk management systems
 - Setting up Vigil Mechanism for directors and employees to report genuine concerns
 - Oversight over the financial statements and governance process of subsidiaries / associates and joint ventures
 - Oversee Vigil Mechanism

Additional Requirements - Listing Agreement – In force w.e.f October 01, 2014

- ❑ Qualified and independent AC shall be set up with minimum 3 Directors as members and 2/3rd of the members of audit committee shall be ID.
- ❑ All members of AC shall be financially literate and at least one member shall have accounting or related financial management expertise.
- ❑ The Audit Committee should meet at least 4 times in a year and not more than four months shall elapse between two meetings
- ❑ The Chairman of the Audit Committee shall be an ID and shall be present at AGM to answer shareholder queries;

Nomination and Remuneration Committee (NRC)

Additional requirements – Companies Act, 2013

- ☐ Transitional period of 1 year has been provided for constitution of NRC from the commencement of these rules or appointment of ID, whichever is earlier.
- ☐ Chairperson of the Company may be appointed as a member but cannot be Chairperson.
- ☐ The committee to 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.
- ☐ To identify persons who may be appointed in Senior Management..
- ☐ To carry out evaluation of every director's performance and recommend to the board his/her appointment and removal based on the performance.
- ☐ Disclosure of NRC in the Board's Report

Additional Requirements - Listing Agreement – In force w.e.f. October 01, 2014

- ☐ NRC shall comprise at least 3 directors, all of whom shall be NEDs and at least 50% shall be IDs
- ☐ The Chairman of the Committee shall be an independent director.
- ☐ The Chairman of the Committee shall be present at Annual General Meeting to answer shareholder queries. However, it would be up to the Chairman to decide who should answer the queries.

Stakeholders Relationship Committee (SRC)

Companies Act, 2013

- ☐ Chairperson shall be a non-executive director and such other members as may be decided by the Board.
- ☐ The role of the committee is to consider and resolve the grievances of security holders of the company

Listing Agreement – In force w.e.f October 01, 2014

- ☐ Company to constitute a Stakeholders Relationship committee, in which Chairperson shall be a non-executive director and such other members as may be decided by the Board.

THANK YOU