



STARTUP

MAJOR COMPLIANCES



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Types of Entities

1. Private Limited Company
 2. Public Limited Company
 3. Small Company (50 Lac Cap / 2 Cr. Turnover)
 4. One Person Company
- Requirement of minimum paid- up share capital for private and public companies are omitted. (For ease of doing business)



MEMORANDUM OF ASSOCIATION

- Operations of a company to be within the scope of Object clause.
- Careful drafting of object clause while incorporating the company.
- Object clause can be easily changed at any point of time.



BOARD OF DIRECTORS - STRUCTURE

1) Every company shall have :

(a) a minimum number of

- Three directors - public company,
- Two directors - private company,
- One director - One Person Company; and

(b) a maximum of fifteen directors:





BOARD MEETING

- There has to be minimum 4 Board Meeting in a year and;
- Not more than **120 days** gap must be there between any 2 Board Meeting.
- Quorum of Board Meetings
 - Private Company – 2 members personally present.
 - Public company
 - 5 members Personally present – Members of company not more than 1000
 - 15 members Personally present – Members of company more than 1000 but less than 5000
 - 30 members Personally present – Members of company exceeding 5000



Powers of the Board

The Board of Directors of a company shall exercise the following powers on behalf of the company by means of resolutions passed at meetings of the Board, namely

- (a) to make calls on shareholders in respect of money unpaid on their shares;
- (b) to authorise buy-back of securities under section 68;
- (c) to issue securities, including debentures, whether in or outside India;
- (d) to borrow monies;



POWERS OF THE BOARD (CONTD.)

- (e) to invest the funds of the company;
- (f) to grant loans or give guarantee or provide security in respect of loans;
- g) to approve financial statement and the Board's report;
- (h) to diversify the business of the company;
- (i) to approve amalgamation, merger or reconstruction;



POWERS OF THE BOARD (CONTD.)

(j) to take over a company or acquire a controlling or substantial stake in another company;

(k) any other matter which may be prescribed:

- to make political contributions.
- to appoint or remove key managerial personnel.
- to appoint internal auditors and secretarial auditor.



RESTRICTIONS ON POWERS OF BOARD

The Board of Directors of a company shall exercise the following powers only with the consent of the company by a **Special Resolution**, namely:—

- a. to Sell, Lease or otherwise dispose of the whole or substantially the whole of the undertaking of the company or where the company owns more than one undertaking, of the whole or substantially the whole of any of such undertakings.
- b. to Invest otherwise in trust securities the amount of compensation received by it as a result of any merger or amalgamation;
- c. to Borrow money, where the money to be borrowed, together with the money already borrowed by the company will exceed aggregate of its paid-up share capital and free reserves, apart from temporary loans obtained from the company's bankers in the ordinary course of business:
- d. to Remit, or give time for the repayment of, any debt due from a director.



LOAN TO DIRECTORS

- No Company shall directly or indirectly,
 - ✓ Advance any loan (including loan represented by book debt)
 - ✓ Gives any **guarantee** or provide any **security** in connection with a loan to:
 - ☐ Any Director
 - ☐ Any other person in which Director is interested which means
 - i. Director of lending Company or of a holding company
 - ii. Partner of director
 - iii. Relative of director



LOAN TO DIRECTORS (CONT.)

- iv. Firm in which such director is a director or relative is a partner.
- v. Any private company in which director is a director or a shareholder.
- vi. Body corporate where 25% or more voting power is held by one or more director.
- vii. Body corporate, Board of director, managing director, or manager accustomed to act as per instruction of lender or one or more director.



RULE 10 OF BOARD RULES

- Loan by Holding company to/ for :
Wholly owned subsidiary exempted from section 185
 - Guarantee/ security to others for loan by other than bank/ FI exempted only for wholly owned subsidiary.
 - Section 185 do not authorise rule making. This rule is in general powers of exemption under section 462.
- Guarantee given or security provided by holding company for :
Loan by bank or FI to any subsidiary company exempted



EXEMPTION TO PRIVATE COMPANIES

➤ **Provisions of Section 185 shall not be applicable to Private Company :**

- In whose share capital no other body corporate has invested any money;
- If borrowings of such a company from banks or financial institutions or any other body corporate is less than twice of its paid up share capital or fifty crore rupees, whichever is lower and
- Such a company has no default in repayment of such borrowings at the time of making transactions .



LOANS AND INVESTMENTS (SECTION 186)

1. Company shall make investment through not more than

- Two layers of
- Investment Company

Except:

- ✓ Outside India as per local laws.
- ✓ To meet requirement of law or regulation or rules under law.



LOANS AND INVESTMENTS (SECTION 186)

2. No company shall directly or indirectly:

- Give any loan, guarantee/ provide security for loan to any:
 - ✓ Any person, or
 - ✓ Body Corporate
- Acquire securities of any other Body Corporate exceeding
 - 60% of Paid up Capital plus free reserves plus security premium *or*
 - 100% of free reserves plus securities premium, whichever is more.



LOANS AND INVESTMENTS (CONT.)

3. Loan or investment in excess of limits.
 - Special Resolution by shareholders.
 - Unanimous consent of all the directors present in a meeting.
→ No resolution by circulation
4. Prior approval of public financial institution where loan subsisting for exceeding limit as per Section 186(2) or where is a default.
→ Word “Bank” or “Lender” is not there in the Law.
5. Loan at minimum interest rate equal to yield Government security as per tenor (1/3/5/10 years).



LOANS AND INVESTMENTS (CONT.)

6. Defaulter of Deposit or interest thereon prohibited to give Loan or guarantee.
7. Register of loans, guarantees, Securities.
8. Financial statements to contain full particulars
 - a. Loan given
 - b. Interest made
 - b. Guarantee given
 - d. Security provided

To also disclose purpose of utilisation by recipient or loan/guarantee/ security



LOANS AND INVESTMENTS (CONT.)

EXCEPTIONS:

Section 186 do not apply to

- Banking Company
- Insurance Company
- Housing finance
- Company engaged in the Business of financing – not necessary to be NBFC- Main object should have Business of Financing as one object- to amend object clause , where necessary
- Company providing infrastructural facilities.



LOANS AND INVESTMENTS (CONT.)

EXCEPTIONS:

Section 186 do not apply to

- NBFC whose principal business is security acquisition
 - *Exemption from lending and investment both.*
 - could be even a company exempted from NBFC registration – in case of group investments – subject to guidelines and limit as per RBI master circular
- Company whose main business is acquisition of securities- include share brokers and sub brokers
- Share investment in Right issue of investee company (under section 62(ii))



EXEMPTION (RULE 11 BOARD RULES)

Resolution under Section 186(3) not needed if:

- Loan or Guarantee or Security to Wholly Owned Subsidiary or Joint Venture Company

- Joint Venture Company not defined

- Gateway to exempted loans to all company whose shares are owned under a JV agreement

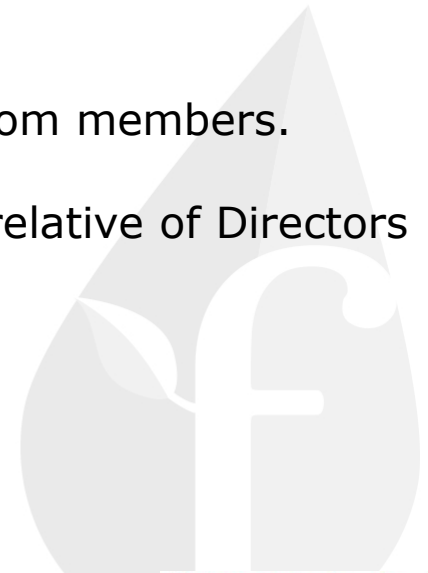
- Investment in Wholly Owned Subsidiary



ACCEPTANCE OF DEPOSITS BY COMPANIES

“Deposit” includes any receipt of money by way of deposit or loan or in any other form by a Company, but does not include such categories of amount as may be prescribed in consultation with the Reserve Bank of India.

- All companies, including Private, can accept deposits only from members.
- Private Company can also accept deposit from Directors or relative of Directors of the company. [Notification dated 15th September, 2015]
- Prior approval of members required for accepting deposits
- Section not applicable on
 - Banking companies,
 - Non banking financial company
 - Other company as Central Government may specify.





ACCEPTANCE OF DEPOSIT FROM DIRECTOR

Any amount of deposit can be received from the director or relative of director of the company:

Provided

- ✓ He was a director at the time of receipt of money.
- ✓ Furnishes a declaration in writing to the effect that the amount is not being given out of the funds acquired by him by borrowing or accepting loans or deposits from others.



CONDITIONS FOR ACCEPTANCE OF DEPOSIT

Deposits can be accepted from Members subject to following conditions:

1. Issuance of Circulars mentioning:
 - ✓ Company's financial position,
 - ✓ Credit Rating,
 - ✓ Total no. of Depositors,
 - ✓ Amount due towards previous deposits.
2. File a copy of circular within 30 days before the date of issuance of circular.
3. Deposit with Scheduled Bank in Deposit Repayment Reserve A/C, not less than 15% of deposit maturing in current and next FY.

Note:- This account shall be used only for repayment of deposits.

4. Obtaining Deposit Insurance.
5. No default in repayment of deposit and interest thereon in the past.
6. Deposits to be secured by Property or Assets of the company. Where deposits are unsecured, it has to be specifically quoted in every document inviting deposit.

Note:- The conditions stated above shall not be applicable to Private company which accepts deposits from its members not exceeding 100% of aggregate of paid up capital and free reserves [Notification dated 5th June, 2015]





DEPOSITS DOES NOT INCLUDE:

1. Money received from
 - ✓ Commercial Paper and Inter Corporate Deposits
 - ✓ State or Central Government
 - ✓ Foreign Government
 - ✓ Bank
 - ✓ Public Financial Institutions
2. Amount received pursuant to an offer for subscription:
 - ✓ To any securities
 - ✓ Share Application money, or
 - ✓ Advance towards allotment of securities pending allotment



DEPOSIT DOES NOT INCLUDE CONTINUED...

- ✓ Provided amount mentioned in point 2 above i.e. subscription money shall be used for:
 - ✓ Allotment within 60 days, or
 - ✓ Refund within 15 days from the expiry of 60 days
 - ✓ Adjustments for any other purpose not permitted.
- ✓ Amount received from Directors own sources.
- ✓ Fully Secured Debentures/Bonds by first charge or pari passu charge on the asset of the company not exceeding the market value excluding Intangible assets
- ✓ Compulsorily convertible bonds / debentures within five year



GENERAL MEETING

- Two types of meetings:
- **Annual General Meeting**:-To be held within 9 months from the date of closing of first financial year
- **Extraordinary General Meeting**: Can be called at any time the board may deem fit.



CHARGES

- **Definition** — As per Section-2 (16) Charge means
 - - An interest or lien created on the property or assets of a company
 - or any of its undertakings
 - or both as security and
 - includes a mortgage;





CHARGE

- **Section 77** states that Companies are required to register ALL TYPES OF CHARGES, with ROC **within 30** days of its creation.
- within or outside India, on its property or assets or any of its undertakings, whether tangible or otherwise, and situated in or outside India



RELATED PARTY TRANSACTIONS

- **The following are included:**

- Director
- Relative of director
- Key managerial personnel(KMP)
- Relative of key managerial personnel
- Director or KMP of holding company or their relatives(Rule 3)
- Firm, in which a director, manager or his relative is a partner;
- Private company in which a director or manager is a member or director;



RELATED PARTY TRANSACTIONS (Cont.)

- Public company in which a director or manager is a director along with his relatives holds , two per cent or more of its paid-up share capital;
- Any person on whose advice, directions or instructions a board of director or MD or manager is accustomed to act, except in professional capacity.



SEC. 188- RELATED PARTY TRANSACTIONS

- Following are to be considered as related party transactions in respect of which prior approval of Board is to be obtained:
 - Sale, purchase or supply of any goods or materials;
 - Buying or selling of property
 - Leasing of property
 - Services rendering;
 - Agent for goods, services or property;
 - Appointment of related party on office or place of profit in:-
 - ✓ the company,
 - ✓ its subsidiary company
 - ✓ associate company;
 - underwriting subscription or derivatives





RESOLUTIONS REQUIRED TO BE FILLED WITH REGISTRAR

- **Section 117 provides for the following resolution to be filled**
- All Special Resolutions.
- Resolutions agreed by all Members.
- Resolution of Board or Agreement relating to the appointment, re-appointment or renewal of appointment or variation of the term of appointment, of a managing director.
- Resolutions or agreements which have been agreed to by any class of members.
- Resolutions passed by a company according consent to the exercise by its Board of Directors u/s 180(1)(a) & (c).
- Resolutions passed in pursuance of section 304 (wound up voluntarily).
- Any other resolution or agreement as may be prescribed and placed in public domain.



FINANCIAL STATEMENTS(SECTION 129)

- **Financial Statements (Section 2(40)) include:**

- Balance sheet
- Profit & Loss statement or an income and expenditure account(NPO) for the financial year,
- Cash Flow Statement(Except One Person Company, Small Company*, Dormant Company)
- Statement of changes in equity, if applicable; and
- Any explanatory note annexed to, or forming part of, any document referred to sub-clause (iv) stated above.

–*Small company- Rs.50 Lakh to Rs.500 Lakhs paid up capital or turnover Rs.2 Crores to Rs.20 Crores



FINANCIAL STATEMENTS CONTD.....

- **FS & CF to be approved by the Board before signed by :**
 - Chairperson or two directors out of which 1MD
 - CEO if he is director
 - CFO
 - CS
- **Every FS to be issued, circulated, published with:**
 - Notes
 - Auditors report
 - Board Report
- **Non- compliance – Co- 25K to 2500K;**
- **Officer in default – Imp. Up to 3 yrs or fine – 50K to 500k or both**



FILING OF FINANCIAL STATEMENT (SECTION 137)

- To be filed with ROC in **Form AOC -4 (Rule 12)**
- Within 30 days of AGM – AOC 4 **TO BE CERTIFIED BY CA/CS/CWA ONLY**
- **In case of failure after 30 days additional fee is payable.**
- **After 300 days mandatory punishment with fine**
 - **For Company – Rs 1000/- per day maximum up to 10 L; and**
 - Managing Director
 - Chief Financial Officer
 - Any other director charged with such responsibility
 - All directors in the absence of above persons punishable with:
 - **Imprisonment - up to 6months or**
 - **Fine – Minimum 1L : Maximum up to 5L or Both**



INTELLECTUAL PROPERTY RIGHTS

- Intellectual property rights include:
- Copyright
- Patents
- Trade marks
- Design rights
- Passing off
- The scope of these rights differs but sometimes overlaps and the infringement of the intellectual property rights gives rise to the criminal penalties.



COPYRIGHT LAW

- Copyright protects works from being copied without permission. Copyright goes beyond mere copying, however, and extends to other activities such as making an adaptation of the work in question, performing or showing the work in public, broadcasting the work and dealing with infringing copies of the work.
- The types of works protected by copyright are literary works which includes (computer programs, preparatory design material for computer programs and databases, dramatic, musical and artistic works, sound recordings, films, broadcasts, cable programmes and typographical arrangements of published editions)



PATENT LAW

- Patent Law is mainly concerned with new inventions such as a new type of computer hardware, or a new process for use in manufacture of Integrated circuits (ICs).
- For an invention to be protected by a patent, an application must be made to the Patent Office which is an expensive and lengthy process but if granted, the patent can be renewed for a total period of up to 20 years.
- To be patentable, an invention must be novel (new), involve an inventive step, be capable of industrial application and not be excluded.



TRADEMARK LAW

- Trade marks are often in the form of a name or a symbol and registration is provided for by the TradeMarks Act 1999. Marks may be registered in respect of goods or services.
- To be registrable, the mark must be *distinctive* and capable of being represented *graphically*.
- Trade marks are very important as they become associated with successful products and purchasers normally buy or order goods or services by reference to the mark

THANK YOU!

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